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HISTORY
OF
CALIFORNIA

HISTORY
OF
CALIFORNIA

BY
THEODORE H. HITTELL

VOLUME IV



SAN FRANCISCO
N. J. STONE & COMPANY

1898

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History of California.

BOOK XI.

EARLY STATE ADMINISTRATIONS.

CHAPTER I.

BURNETT.

WHEN California was admitted into the Union, Peter H. Burnett was governor. He had been chosen at the election of November 13, 1849, at the same time that the constitution of 1849 was adopted by the vote of the people. He had been inaugurated at San José on Thursday, December 20, 1849; and he had acted as governor throughout the important first session of the legislature, than which, as has already been stated, no legislature in the state ever did more work, more important work or better work. No governor of the state, except perhaps the one who acted at the breaking out of the civil war, had a better chance of making and deserving a great reputation.

Burnett was born at Nashville, Tennessee, on November 15, 1807. His father, a carpenter by trade, was a native of Virginia. The family name had been Burnet; but Peter, when about nineteen years of age, with an idea of improving and making it more emphatic, as he said, added a second "t" and changed the accent from the first syllable to the last; and his example was followed by all the others. In 1817 his father moved to Missouri, first to

Howard county and from there in 1822 to Clay county. In 1826 Peter returned to Tennessee and became clerk in a country hotel and afterwards in a country store. In 1828 he married and undertook to conduct a country store on his own account, but failed with an indebtedness of seven hundred dollars. He then commenced to study law. In 1832 he went back to Missouri, where he again engaged in the mercantile business, first as clerk and then as partner; but in 1838 he again failed, this time with an indebtedness of about fifteen thousand dollars. Satisfied by this experience that he was not fitted for a mercantile life, he a second time turned to the law; and, having in the meanwhile gained some little reputation as a speaker in a debating society and at political meetings and as a writer by having for a short time edited a weekly newspaper, called "The Far West," he felt himself qualified for practice. He had already in 1833 been admitted to the bar of all the courts of Missouri. Upon opening his office at Liberty, the county seat of Clay county, in 1838, he came in competition with a number of old-established lawyers, among whom were David R. Atchison, Alexander W. Doniphan and William B. Almond. His first complaints as legal documents seem to have afforded a great deal of amusement to his brother lawyers; but he soon improved; and in 1839 he was employed as one of the counsel for Joseph Smith, Sidney Rigdon and other Mormon leaders, who were then under arrest in Liberty jail on charges of treason, arson and robbery. The cause of the Mormons was exceedingly unpopular; the community in general was excessively bitter against them; there were threats and indications of mob violence; and counsel had to go armed. At a hearing on habeas corpus for the release of the prisoners, Burnett made the opening speech on their behalf and Doniphan the closing one. As the latter rose, Burnett whispered to him to "let himself out" and he would kill the first man that dared attack him; and, according to Burnett's account, Doniphan made one of the most eloquent and withering speeches he ever heard; while the maddened crowd foamed and gnashed their teeth, and Burnett sat with his hand upon his pistol, calmly determined to do as he had promised.¹

¹Recollections and Opinions of an Old Pioneer, by Peter H. Burnett, New York, 1880, 1-55.

About the beginning of 1840 he was appointed district attorney of his judicial district and he continued to serve as such for three years and upwards. In the same year 1840 he became a professor of Christianity and joined the Disciples of Christ or Campbellites, a sect somewhat similar to the Baptists. In the spring of 1843, having six children and understanding that an emigrant to Oregon would be entitled to six hundred and forty acres of public land for himself and one hundred and sixty for each of his children, making sixteen hundred acres in all, he determined to emigrate to that then wild country; and, after traveling about in several neighboring counties and making speeches in favor of Oregon, he set out with his family in the early part of May, 1843, for the general rendezvous at Big Springs with three wagons, four yoke of oxen and two mules. On May 22 a general start was made and by the end of the month the Kansas river was reached and crossed. On June 1 the emigrants, who numbered nearly three hundred men besides women and children, organized a company by the election of Burnett captain, James W. Nesmith orderly sergeant, and nine councilmen. Burnett, however, soon found that he could not manage his constituents and on June 8 he resigned his position as captain; and William Martin was elected his successor. On August 7 they crossed the summit of the Rocky mountains and drank of water flowing towards the Pacific ocean; on August 27 they reached Fort Hall, and on October 16 Fort Walla Walla. In January, 1844, after looking around for a few months, Burnett assisted in laying out the town of Linnton on the Willamette river, some miles below Portland. He supposed it to be the head of ship navigation; but in the course of four or five months, becoming convinced that the real head of navigation was further up the river, he abandoned the idea of city building and removed to the Tualatin plains, some twenty-five miles west of Linnton, where he took up a "claim," as it was called, in the middle of a circle of level land about three miles in diameter, and commenced farming.¹

The people of Oregon had already in 1843 organized a sort of provisional government; but it was found to be very imperfect

¹ Burnett's Recollections, 68-141.

and did not work well. Soon after settling at Linnton in January, 1844, Burnett was consulted as to the right of the people to organize a provisional government for themselves; and at first he gave his opinion against such right. But a few weeks subsequently he changed his mind and advised that the right undoubtedly existed and ought to be exercised. The question of sovereignty over the country, he said, was in dispute between the United States and Great Britain; and therefore neither could well establish a government. On the other hand the population, being composed of British subjects as well as American citizens, was heterogeneous; and government of some kind was a necessity. Having thus taken the correct and, as it proved, the popular view of the subject, he was soon afterwards nominated and elected a member of the "Legislative Committee of Oregon," which held two sessions in 1844, one in June and the other in December, and in several short statutes provided a new scheme of government, essentially like that of Iowa territory and a great improvement on the previous attempted organization. An act was passed giving to each bona-fide settler upon public land, who had made or should make permanent improvements, a right to occupy and hold six hundred and forty acres, provided he should hold only one claim at one time; but he might hold town lots in addition to his claim. Another act prohibited the importation, distillation, sale or barter of ardent spirits. Taken altogether the legislation was for a community which had passed through trials that had tested their patience and were not difficult to govern. Burnett said that he never saw a finer population and added, "They were all honest, because there was nothing to steal; they were all sober, because there was no liquor to drink; there were no misers, because there was no money to hoard; and they were all industrious, because it was work or starve."¹

Another remarkable act passed by the legislative committee in 1844 was to the effect that any person, who refused to pay his taxes, should have no benefit of the laws of Oregon and should be excluded from voting at any election in the country—in other words, it made of every citizen, who for any reason failed to pay his taxes, an outlaw without any civil rights whatever. But the

¹ Burnett's Recollections, 168-181.

most remarkable piece of legislation, which was introduced by Burnett and known as one of his laws, was in relation to slaves, free negroes and mulattoes. It provided in the first place that slavery and involuntary servitude should be forever prohibited in Oregon. It then provided that in all cases where slaves had been or should thereafter be brought into Oregon, the owner should have three years after their introduction to remove them out of the country; and that, if not so removed within such time, such slaves should be free. It further provided that any free negro or mulatto then in Oregon of the age of eighteen years or upwards should leave the country within two years if a male, and within three years if a female; or, if any such free negro should thereafter arrive, he or she should leave within the same periods after arrival, and if under age then within like periods after coming of age. Upon failure to leave, he or she might be arrested and, if found guilty before a justice of the peace of not leaving, should receive upon his or her bare back not less than twenty nor more than thirty-nine stripes to be inflicted by the constable, and a like punishment every six months thereafter. Within less than six months after the passage of this act public sentiment demanded an amendment of these clauses in reference to corporal punishment; and, on motion of Burnett, a change, though hardly an improvement, was made by providing that instead of being flogged, the free negro or mulatto male or female, who failed to leave, should be publicly hired out, or in other words sold into slavery to the bidder for the shortest term of service, who would engage under bonds to remove such negro or mulatto within six months after such term of service should expire. The whole business was, however, felt to be so unjust that in 1845, before any attempt could be made to enforce any of its provisions, the act was repealed.¹

In the autumn of the same year 1844 Burnett, while still a Campbellite, borrowed and read a published debate between Alexander Campbell, the founder of his sect, and John Purcell, the Catholic bishop of Cincinnati. He said that he borrowed it because the Catholic question was so often mentioned, and that upon reading it, though not convinced of the entire truth of the

¹Burnett's *Recollections*, 212-221, 227, 228.

Catholic theory, he was astonished to find that so much could be said in its support. He then determined to investigate the question between Catholics and Protestants thoroughly and procured all the works on both sides within his reach and examined them alternately side by side. At the end of about eighteen months, after what he considered an impartial and calm investigation, he became convinced in his own mind of the truth of what he called the "Catholic theory" and in June, 1846, at Oregon City joined the Catholic church. He afterwards, in an apparently proselytizing spirit and possibly also with a view of enlightening a benighted world and especially that part of it that belonged to his own profession, wrote a book entitled "The Path which led a Protestant Lawyer to the Catholic Church."¹

On July 25, 1845, a new system of government for Oregon, known as the "Organic Articles of Compact," was adopted by the people; and on August 18, 1845, Burnett was elected, by the house of representatives under the new system, judge of the supreme court. On June 15, 1846, a treaty was concluded between the United States and Great Britain by which the latter acknowledged the sovereignty of the former over all that part of what was then Oregon lying south of the forty-ninth parallel of north latitude; and on August 14, 1848, the congress of the United States organized the country into the territory of Oregon and gave it a territorial government, with regular and unquestionably legal executive, legislative and judicial departments. A short time previous to the passage of the territorial act, Burnett had been elected to the house of representatives; and on the day of the passage of the act President Polk appointed him one of the justices of the supreme court of the territory. But by this time the news of the discovery of gold at Coloma had reached Oregon; and Burnett resolved to resign his office, abandon Oregon at least for the time and seek his fortune in the gold fields of California. He immediately went out into the streets of Oregon City and began talking up an expedition; and he met with such success that he soon organized a company of one hundred and fifty stout, robust, energetic and sober men, with fifty wagons

¹ Burnett's Recollections, 188-191.

and ox-teams, an ample supply of mining implements, and provisions for six months.¹

Up to that time no wagons had crossed overland between Oregon and California; and it was deemed uncertain whether they could get through. But the advantages of having teams and thereby carrying large supplies were so obvious that it was deemed more than worth the risk to try. Burnett was elected captain of the party. He left his family in Oregon. Though alone, he provided a very complete outfit and for the purpose of carrying it he took two wagons and teams besides two saddle horses. The company set out in October, 1848, and, traveling by the way of Goose Lake and Pit river, after some difficulty in getting over the mountains, arrived safely in the Sacramento valley, where it broke up and separated. Burnett and a few others proceeded to Sutter's Hock Farm on Feather river; thence to Nye's Ranch and from there to the mines at Long's Bar on the Yuba river, where they arrived on November 5, 1848. After a short experience at mining, at which he made about twenty dollars per day, he in December, 1848, proceeded to Sutter's Fort and there became the attorney and agent of John A. Sutter Jr. to whom John A. Sutter Sr. had conveyed his New Helvetia grant of eleven square leagues in trust to pay debts. Burnett's agreement was to attend to all the legal and real-estate business for a compensation of one-fourth the gross receipts; and it appears that by the middle of August, 1849, he had paid all Sutter's debts and made a very handsome profit for himself.²

In the meanwhile the question of a provisional government for California, in view of and on account of the failure of congress to provide a territorial organization, was, as has already been stated, agitated in all parts of the country. On August 27, 1848, Thomas H. Benton, United States senator from Missouri, who for various reasons took great interest in California, had published a letter addressed to its people declaring that the temporary civil and military government established over them as a right of war was at an end, and in effect advising them to form a government for themselves. In accordance with this

¹ Burnett's Recollections, 193, 194, 228, 239, 253-255.

² Burnett's Recollections, 255-294.

advice, as has also been stated, a number of public meetings, designed to further the calling of a convention to frame a provisional government, were called in different places. The first was held at San José on December 11, 1848. This was followed by meetings, with the same objects in view, at San Francisco on December 21 and 23. And the next were held at Sacramento on January 6 and 8, 1849. These last two meetings were presided over by Burnett. They all advocated the immediate calling of a convention in accordance with what was known as the Benton doctrine as opposed to the so-called Buchanan doctrine represented by the administration, which maintained that a valid de-facto government, presided over by Governor Mason and upon his resignation by Governor Riley, existed. But, as has been further shown, all these differences between opposing views were finally reconciled by Riley's calling, at the advice of Mason an election for delegates to a constitutional convention and the general acquiescence of the different parties in this exceedingly judicious plan for preserving order and securing a government.

At the election for delegates to the constitutional convention under the proclamation of Governor Riley, held on August 1, 1849, there was also an election for various temporary officers to carry on the civil government until a state organization could be effected. At this election Burnett was a candidate for the office of judge of the superior tribunal of justice from the district of Sonoma, Sacramento and San Joaquin, and he was chosen; but as a matter of fact no action of any importance was ever taken by the superior tribunal as then constituted; and in the following October Burnett resigned, having already announced himself a candidate for the office of governor of the state. In his candidacy he claimed and represented himself to be a Democrat, an out-and-out Democrat, a Democrat in the strictest sense of the word; and in 1849 and for a number of years afterwards the Democratic was the popular side. Though there were many Whigs in California most of the immigrants were or claimed to be Democrats. They were at least decidedly in favor of the Mexican war and of enjoying all its fruits; and, as that war, though not made a distinct issue between the two great political parties then dividing the country, was regarded more as a Demo-

cratic than as a Whig measure, the great majority of them called themselves Democrats and voted the Democratic ticket. An incident, illustrating the general sentiment of the miners on this subject, occurred at a landing near Merritt's slough on the Sacramento river in April, 1849. Theodore T. Johnson, who had just arrived by sea from the east, was going up the river when he met a number of miners returning from the Yuba to San Francisco. Like Californians in general they were ready to enter into conversation and furnish all the information in their power in exchange for the latest news from the states. When informed of the election of General Taylor to the presidency, they evinced a strange mixture of satisfaction and chagrin—satisfaction at having a Mexican war hero and old Indian fighter at the head of the government, and chagrin that he had not been elected by the Democratic party. But they finally concluded that "it was mighty likely he would turn out a 'raal' Democrat at last;" in reply to which Johnson could not refrain from hinting his belief that Taylor would "turn out a good many 'raal' Democrats."¹

The first Democratic mass-meeting in California took place, as already mentioned, in San Francisco on Thursday evening, October 25, 1849. It was called to meet at Dennison's Exchange; but, as that place proved too small, the crowd moved over across Kearny street to Portsmouth Square. John W. Geary presided. William Van Voorhies, after a few remarks on the condition of affairs in California and the advantage of effecting an organization of the Democratic party in view of the approaching elections, presented an address to the people and a preamble and resolutions, which were unanimously adopted and twenty thousand copies ordered to be printed for circulation. The preamble and resolutions, which embodied the scope and spirit of the meeting, set forth that the Democratic citizens of San Francisco felt a natural and deep interest in the general welfare of the country; that there were certain great cardinal principles, handed down by the framers of the charter of American liberties, which ought always to be observed; that a "union of Californians for the sake of California" was well, but a "union of Californians for

¹ Johnson's *California and Oregon*, 116.

the sake of California and the Union" was better; that in the selection of senators and representatives to the congress of the United States vigilant care should be taken to guard against misrepresenting the views and opinions of the people in reference to measures affecting the Union; that all attempts to place California in a mere local, sectional or false position before or in respect to the Union should be met at the threshold and defeated; that partyism for the mere sake of party should be totally repudiated and rejected; that principles having for their object the preservation of the constitution inviolate, resistance to and defeat of powerful and chartered monopolies, opposition to enactments intended to benefit the few at the expense of the many, and zealous advocacy of a policy which would preserve the honor of the country when menaced, punish the offender when its rights were invaded and ever look forward to an honorable extension of the area of freedom, should be ardently supported; that no man ought to be elevated to a position of trust or confidence who voted that the Mexican war was unholy, iniquitous, unnecessary or unjust in its inception, or who by his political connections or otherwise directly or indirectly denounced it as wicked or murderous in its prosecution; that no man ought to be advanced to public station who refused or would have refused to vote supplies "for our gallant little army who gloriously engaged in grappling with the enemies of its country upon the ensanguined fields of Mexico," and that the meeting was "for our country first, our country last, and our country all the time;—not a section, not a circumscribed locality, not a limited interest; but the whole country."

Speeches were made by Charles T. Botts, Edmund Randolph and others; and at the end of the meeting, on motion the chair appointed a nominating committee of eleven persons to present the names of candidates for state offices to be voted for at the approaching election. Among those appointed on this nominating committee were Stephen R. Harris, Charles L. Scott, Edmund Randolph and Frederick P. Tracy; and they were to report at an adjourned meeting to be held at the same place on Saturday evening, October 27, 1849. At the adjourned meeting Harris presented the report of the committee in the

shape of a list of nominees for the various offices; but Paul K. Hubbs objected to it. He said that his objection was not specially to the names of nominees but to the manner of the appointment of the committee, which was not in accordance with the time-honored usages of the Democratic party. He therefore offered a series of resolutions to the effect that the meeting recognized and would maintain the Democratic doctrine that the people were the true sovereigns of political power, from whom alone could emanate the nomination of candidates for office, and that accordingly an election should be held for delegates to a nominating convention or, in other words, that instead of accepting a ticket from a committee appointed by the chairman of a meeting, there should be a primary election and a ticket made by delegates properly elected. On vote these resolutions were adopted; and a primary election called for Monday, October 29, 1849. The further proceedings of the meeting consisted of the adoption of a pledge to support the ticket to be nominated; a pledge to vote for no man who did not favor homestead exemption, and a pledge to vote for an Atlantic and Pacific railroad through United States territory in preference to any other. And finally, on motion of Jonathan D. Stevenson, who had moved the homestead exemption and railroad pledges, a vote of thanks was tendered to Thomas H. Benton for his support to California and his advocacy of a transcontinental railroad.¹

In accordance with Hubbs' resolution a primary election was held and ticket nominated. And so too in other parts of the country, tickets were put forward. The election came off on November 13, 1849, at which the question of the adoption of the constitution was submitted as well as the names of candidates for state offices. It was an election in which the electors in general knew very little of the questions that were presented or of the candidates they were voting for or against. Absurd prejudices and cranky notions of various kinds had much to do with the vote. On the Mokelumne river, for instance, a candidate lost twenty votes because he had shown himself a few days previously wearing a high-crowned silk-hat with a narrow brim.

¹ *Alta California*, November 1, 1849; *Annals of San Francisco*, 236.

Some of the miners would go no further than to vote for persons they actually knew; and under these circumstances, of course, they voted for very few persons. But on the other hand many voted without knowing or caring much to make inquiry. The native Californians and the Mexicans, who had become citizens by operation of the treaty of Guadalupe Hidalgo, voted with quite as little consideration. They considered it an extraordinary privilege to be allowed to vote at all; and it therefore made very little difference to them what a ticket was: they were proud to vote and would vote any ticket that was put into their hands. The most curious case, however, was that of a man who, as he said, "went it blind." In justification he gave the following explanation. "When I left home, I was determined to 'go it blind.' I went it blind in coming to California and I am not going to stop now. I voted for the constitution and I have never seen the constitution. I voted for all the candidates and I don't know one of them. I am going it blind all through—I am."¹ It can hardly be said, however, notwithstanding these glimpses into the reasons that actuated some of the voters of 1849, that they voted in general with less intelligence than the voters of to-day. It cannot be said, for instance, that any of the defeated candidates were better than those elected, though it may with truth be said that some were worse. But be that as it may, the constitution, as has already been shown, was adopted by a nearly unanimous vote, and Burnett was elected governor, not indeed by a majority but by a handsome plurality over any other candidate.

Meanwhile, in May, 1849, Burnett's family having arrived in San Francisco from Oregon, he had removed from Sacramento to that place and in the early part of June became a member of the so-called legislative assembly of San Francisco and took a leading part in its proceedings. In August he moved with his family to San José, which had been declared the capital by the constitution; and he resided there at the time of his election to, and during his incumbency of, the office of governor. The main facts in reference to his administration as governor have already been related. Fortunately most of the

¹ Bayard Taylor's *El Dorado*, 252, 253.

statutes, passed at the first session of the legislature and which he approved, were excellent: otherwise much harm might have been done. As Burnett afterwards said, he could not give proper attention to them. They came into his hands so rapidly at the end of the session that it was physically impossible for him to read them all within the time allowed; and he therefore referred some to the secretary of state and some to his private secretary and approved them upon their recommendation.¹

While the legislature was thus engaged in forming its code of statutory law at San José, the state was continuing to make rapid strides of advancement and improvement in almost all directions; and in the meanwhile politics was becoming more and more a factor in the life of the people and attracting more and more of their attention and interest. On March 9, 1850, there took place at San Francisco what may be called the second grand Democratic mass-meeting in California. Other inconsiderable political meetings, both Whig and Democratic, had occurred; but this was intended to be a grand affair, having for its object the uniting and harmonizing of all the conflicting Democratic elements and making out of the dominant party one family with mutual objects and fraternal ties. The meeting was called to take place in the afternoon on Portsmouth Square. About a thousand persons assembled around a platform built next the flag-staff. A band of music discoursed excellent melody, and a magnificently large and brightly-colored star-spangled banner waved overhead. Wilson Shannon was chosen chairman of the meeting and a committee appointed to draft resolutions. For a while the proceedings evoked great enthusiasm; and addresses by several well-known speakers were received with much applause. But when the committee on resolutions presented its report, there was uproar and confusion. The resolutions were in the usual intensely patriotic and unselfish form and substance; but, when they were put to a vote, it appeared that there was a very large dissatisfied and factious element present, which objected and became boisterous. In taking the vote so much noise was made that the chairman was unable to determine which side had the majority. At this the uproar

¹ Burnett's Recollections, 319-340, 346-349, 361.

redoubled and in various quarters blows were indulged in. There was in fact what was known among the professionals as a "general scrimmage," in which broken heads and bloody noses played a principal part. But at length a show of order was restored and again the chairman submitted the resolutions for approval. A storm of "ayes" rang out; but when the "noes" were called they were quite as loud and noisy as the ayes. A second time the chairman was unable to decide. He then called upon those in favor of the resolutions to hold up their right hands; and it appeared as if there were more hands raised than there were voters. At this it was suggested that the "Whigs" had created all the difficulty and, as the meeting was designed to be a Democratic love-feast, they were politely requested to withdraw. The result was that about one-half the assembly moved off; and, as they turned around and saw their unexpectedly large numbers, they commenced hurraing for themselves and whirling their hats in triumph about their heads. This being taken as a challenge, the remaining half of the assembly rushed, with the force of a torrent, upon the retiring forces and swept them temporarily off the field. Upon their return, it was deemed expedient to adjourn the meeting, which was accordingly done with three cheers for the Democratic party.¹

The reason of the strife and of the bitterness with which it was waged soon became, if it was not already, apparent. It was not any difference between the two parties or in the principles advocated by different wings of the Democratic party. But it was clearly a question of spoils and the prospect of directly or indirectly fattening upon them. A person who held any kind of an office in San Francisco had a sort of Fortunatus' purse, from which he could always draw and always find full. On May 1, as has already been stated, the first city charter was adopted and first city election held; and soon afterwards the new municipal government was inaugurated. The city council had, however, hardly entered upon their offices, when, as has been seen, they almost unanimously passed an ordinance providing that most of the municipal officers should be paid an annual salary of ten thousand dollars each and the councilmen, sixteen in all, six

¹ Annals of San Francisco, 267-269.

thousand dollars each. These sums indicated the objects for which the offices were sought; but they were so ridiculously extravagant, particularly in reference to the councilmen, that the community rose in indignation and compelled a modification and afterwards at the next session of the legislature in 1851 procured the passage of a new charter, an important and original feature of which was that members of the common council should not be entitled to any compensation for their services or, in other words, should serve for honor and not for spoils.¹

Though there was much in the California of those days, which might justify its being called in some respects a scene of frantic confusion, there was much also that entitled it to be called glorious, unparalleled, unapproachable. It is true that life was a lottery, business wild, amusements unrestrained and speculation desperate; fortunes made in a day were often lost or squandered as quickly as they had been gained; on every side there was the insatiable spirit of gain; and at the same time there were gambling, midnight orgies, reckless daring, miserable abiding places, physical discomforts, vice, folly, violence, crime, brutal desires and ruinous habits. A large portion of the community had collected from the remotest parts of the earth, and commingled all ranks and grades of society, to win in the fierce fight for fortune or perish in the struggle. The condition of affairs was such as to constitute what some observers termed a general "hell" of all sorts of people. But at the same time hope was boundless; and there never before was so much energy and life in a vast body of men. There was doubtless much wickedness; but there was also much virtue in the better sense of that term. The shadows were deep; but the lights were correspondingly bright.²

In the midst of the swirl, Burnett preserved his integrity. One of his great desires was to pay the debts, which he had contracted as a young man in his unfortunate mercantile transactions in Tennessee and Missouri; and by care and economy he was enabled to do so. Few other men ever went so far in this respect or carried the spirit of honesty, under the circumstances, to such

¹ *Annals of San Francisco*, 278-281.

² See *Annals of San Francisco*, 508.

an extent as he did. It can not, perhaps, be said that there was anything particularly brilliant about him, either as a politician or a lawyer, either as a logician or a rhetorician, either as a speaker or a writer, though in all these capacities he made strenuous efforts and was at least respectable. But there can be no doubt that he intended well. His faults were to a great extent the faults of his education and circumstances. His successes in a wild country, where there were no superior men to contend against, gave him too much confidence in his own abilities and infused, as it were, too much of a didactic tone and spirit in everything he did and wrote. He appeared to be always wanting to teach and unfortunately did not himself always possess the requisite knowledge. He was always wanting to lead the blind and unfortunately was himself too often blind. One of his faults was that, while he very properly recognized the doctrine that legislation and law, especially in a new country, must be made to suit the condition of affairs, he carried it entirely too far and substituted his own, in some instances very crude, ideas of policy and expediency where there was no call or need of turning aside from the main path. He imagined that he had no prejudices; while his prejudices were so apparent, even in his published writings, that it is almost ludicrous to read what he has to say about his freedom from such weaknesses and what he has to say, particularly about negroes and Chinamen, within the same covers.¹

On Monday, January 6, 1851, the legislature met for its second session at San José; and on the next day Burnett presented his annual message. It was a characteristic document. Among other things he said in reference to the Indians: "That a war of extermination will continue to be waged between the races, until the Indian race becomes extinguished, must be expected. While we can not anticipate this result but with painful regret, the inevitable destiny of the race is beyond the power or wisdom of man to avert." And again: "Considering the number and mere predatory character of the attacks at so many different points along our whole frontier, I had determined in my own mind to leave the people of each neighborhood to protect themselves,

¹ Burnett's Recollections, *passim*.

believing they would be able to do so, and that a regular force would not find employment in the field. In two instances only have I deviated from the rule I had laid down for the government of my own action. In these cases the attacks were far more formidable and made at points where the two great emigrant trails enter the state." As each neighborhood and particularly each neighborhood containing an Oregonian element had a peculiar method of protecting itself against Indians and as the two instances of state aid referred to were the San Diego expedition under General Bean and the El Dorado expedition under Sheriff Rogers, already very fully described, it is plain that no very great effort was to be expected during the first state administration to stop the war of extermination against the Indians.¹

In reference to negroes he said: "Although it is assumed in the Declaration of Independence as a self-evident truth, that all men are born free and equal, it is equally true that there must be acquired as well as natural abilities to fit men for self government. Without considering whether there be any reason for the opinion entertained by many learned persons that the colored races are by nature inferior to the white, and without attaching any importance to such opinions, still it may be safely affirmed that no race of men, under the precise circumstances of this class in our state, could ever hope to advance a single step in knowledge or virtue." As to Chinamen, there was up to that time no proscriptive cry; and the governor therefore had nothing to say in his message against them. On the contrary the prospective commercial relations with what was called the "golden orient" and the "oldest nation in the world" rendered the Chinese residents of those early times welcome guests and their presence desirable in the civic celebrations of the day. But notwithstanding his failure to anticipate Governor Bigler in raising the cry against the Chinese, he subsequently took advantage of his autobiography to express his "unprejudiced" opinion against them as "more than a match for the white man in the struggle for existence" and to add his mite to Chinese proscription.²

Another remarkable portion of Burnett's message was the

¹ Journals of Legislature, 1851, 5, 11, 15-18.

² Journals of Legislature, 1851, 19; Burnett's Recollections, 354-356.

recommendation of the punishment of death for grand larceny and robbery. He admitted that this extreme penalty should not be continued when the state should have county prisons and penitentiary; but he said that there had been such a frightful increase of these crimes since the adjournment of the last legislature that he knew of no other mode of punishment likely to check the evil and prevent citizens from taking justice into their own hands. He believed in usury laws, declaring that "the idea that competition among lenders would reduce the rate of interest to a fair and just standard, such as the legitimate profits of business would justify, seemed to be delusive." He also believed that notaries public should be elected instead of appointed. He regretted the failure of the previous legislature to pass a homestead law and recommended a reduction of salaries. He was of opinion that no extra session of a legislature had ever been a success and refused to call one to procure a loan for the state; and he was opposed to the practice of putting burdens upon posterity without their consent by contracting debts which they would have to pay. And, lastly, he urged the entire repeal of a section of the civil practice act of 1850 which provided that no action should be maintained for criminal conversation or for seduction.¹

On January 9, 1851, to the surprise of nearly everybody, he sent in to both houses of the legislature a message resigning his office of governor. He gave as a reason that circumstances entirely unexpected and unforeseen and over which he could have no control rendered it indispensable that he should devote all his time and attention to his private affairs. The real reason seems to have been a consciousness on his part that he was not giving satisfaction. Whatever the fact may have been, the resignation was at once accepted by each house and also in the afternoon of the same day by a joint convention of both houses, which had been called for the purpose of inaugurating the lieutenant-governor as his successor. In commenting upon the subject the *San Francisco Daily Herald*, then one of the ablest journals in the state, expressed its opinion to the effect that Burnett should not have resigned and said of him: "His conduct has in many

¹ Journals of Legislature, 1851, 22-37.

instances been reprehensible; he has been swayed by bad advisers and has suffered himself to be duped by men of more cunning and less honor than himself; but we have never for a moment doubted his good intentions." And again: "He was sadly imposed upon and, yielding to false representations, he suffered himself to become the dupe of designing men who wished to secure their own selfish ends by the prostitution of his office." And still again: "In a time of almost universal depravity he has been thoroughly honest and, notwithstanding a great many temptations, he has maintained a character for uprightness. He has made many enemies and few friends—a thing which might not have happened if he had conducted himself with less regard for integrity."¹

Burnett was in person tall and spare, but strong and rugged. X He was very abstemious in his habits and believed in never entirely satisfying his appetite. He was of cheerful disposition, usually earnest but sometimes sportive in conversation, and fond of reminiscences and anecdotes. He and his wife, with whom he lived to celebrate their golden wedding, reared a family of several sons and daughters, all of whom were born before their arrival in California; and all of whom became excellent citizens. After his resignation of the office of governor, he practiced law for a few years and in 1857 was appointed a justice of the supreme court of California by Governor Johnson. After the expiration of his incumbency of that office, he became a banker in San Francisco and continued such until his final retirement from active business about 1880. ✓

¹Journals of Legislature, 1851, 43-46; San Francisco Daily Herald, January 13, 1851.

CHAPTER II.

MCDUGAL.

THE lieutenant-governor, who became governor of the state upon the resignation of Burnett, was John McDougal, a native of Ross county, Ohio, born about the beginning of 1818. In early years he moved from Ohio to Indiana, where he learned something about military affairs and took part as a volunteer first in the Blackhawk, and afterwards in the Mexican, war. In 1846 he became superintendent of the Indiana state prison in the neighborhood of Indianapolis and in 1848 started for California, where he arrived on February 28, 1849, following his brother, George McDougal, widely known in the early days as a lucky sporting character, who had come out in 1845. While in Indiana he married a lady of Indianapolis, who afterwards joined him in his home on the Pacific. His first experience in California appears to have been that of an unsuccessful miner; but he soon abandoned the mines and settled at Sacramento as a merchant. In the summer of 1849 he was elected a delegate to the constitutional convention from the Sacramento district and took his seat as a member of that body on September 8, 1849. The part he played in that august body was not calculated to do either himself or his constituency any great credit. One of his main contentions was to insert the word "buncombe" in a resolution, offered by John M. Jones, to fix the pay of members at eight dollars per day instead of sixteen as reported by the committee on finances; and another was, on a motion to insert the words "to be" in a certain section of the constitution under consideration, that, as the question was "to be or not to be," the motion ought to prevail.¹ On almost every vote, at which he

¹ Debates of Constitutional Convention, 289, 290, 297; Overland Monthly, XIV, 329.

was present and when his name was registered, he was on the losing side; and, so far as there can be said to have been any buffoon in the convention, he occupied that position more than any other member.

Notwithstanding his unfitness for high and responsible official station, he was at the election of November, 1849, chosen lieutenant-governor by an overwhelming majority over all other candidates. This was due chiefly to his mercurial temperament, easy disposition and readiness to catch and side with the popular humor of the hour. He was almost invariably in a pleasant humor, often jovial and as a rule "hail, fellow, well met" in almost any society of the early days. It is not at all likely that he could ever have been nominated or elected governor; but the office of lieutenant-governor was looked upon as being not very important; and people seem to have voted without much thought of the possibility of the lieutenant-governor becoming governor. Under the circumstances, as McDougal was always ready to talk and almost always on the popular side and was so cheery and socially inclined as to excite no animosities, nearly everybody voted for him; and his score, therefore, though he had such men as Richard Roman, Francis J. Lippitt and John B. Frisbie running against him, amounted to seven thousand three hundred and seventy-four votes and was much the largest thrown for any one candidate at the election.¹

As lieutenant-governor and president of the senate McDougal had little or nothing of importance to do and was hardly afforded an opportunity of displaying his characteristics. But upon becoming governor, he was obliged to represent the state and act as its executive in numerous important instances; and it was then that his unfitness for his position became specially apparent. Like most weak men, raised high above their deserts, he put on airs. His usual dress was an elaborately ruffled shirt, buff vest and pantaloons and blue coat with brass buttons. With these indicia of old-style gentility, he assumed a sort of pompous strut, which was in appropriate keeping with his red face and swelled neck; and in conversation he talked authoritatively like Sir Oracle. It was on account of these peculiarities and the farcical

¹ Journals of Legislature, 1850, 13.

absurdity of such a man issuing proclamations and signing commissions as the act of a great state that he got the designation of "I, John"—a nickname supposed to characterize him in a word—by which he was popularly known and is sometimes referred to even to this day.

Upon his inauguration on the afternoon of January 9, 1851, he was sworn into office by Justice Henry A. Lyons of the supreme court; and he then made a short address to the convention, expressing many distrusts of a proper amount of ability to discharge the duties of his office, but relying upon the characteristic liberality and indulgent consideration of the public. He next addressed himself to the business of governing the state. On January 29, 1851, he sent to the senate his first veto message, in which he said that he had been informed by many members of the legislature, with whom he fully concurred, that a too hasty action had been had in the passage of an act to repeal an act for the inspection of steamboats and that he therefore returned it to the house where it originated without his approval as an admonition against acting prematurely in matters seriously affecting the interest of the public. The senate, curiously enough, received the admonition without resentment and refused to pass the bill over the veto; but a few weeks subsequently a similar bill, originating in the assembly, was passed and received the governor's approval.¹

McDougal's next veto message was sent to the assembly on February 12, 1851. In it he objected to two acts—one repealing a section and the other amending a section of the general act concerning corporations. His point was that the section repealed was not recited in full in the repealing act and that the section amended, as it stood before amendment, was not republished in full in the amendatory act. He claimed that the acts in question for the reason given were clearly in direct violation of the constitutional provision that "no law shall be revised or amended by reference to its title; but, in such case, the act revised or section amended shall be re-enacted and published at length." The assembly, upon receiving this message, instead of taking immediate direct action, reconsidered its vote on the passage of the bill and referred the subject to its judiciary committee, which a

¹ Journals of Legislature, 1851, 47, 51, 96, 368, 664.

few weeks later reported that the governor's objections were not founded upon "a proper, just or legislative construction of the constitution" and that to carry them out would clearly lead to absurd results; and a few days afterwards the bills were passed over the veto by a majority of twenty as against four or five.¹ Notwithstanding the above mentioned able and convincing report of the judiciary committee of the assembly and the almost unanimous vote sustaining it, McDougal on April 26, 1851, more than a month afterwards, sent a similar veto message to the senate in reference to a bill amending a section of an act concerning licenses. The senate, apparently regarding such gubernatorial obstinacy as incorrigible, manifested its opinion of it and its author, by immediately passing the bill over the veto by a unanimous vote; and in the assembly subsequently the bill passed over the veto by the same vote as in the case of the amendatory act concerning corporations.²

On March 26, 1851, he vetoed a bill authorizing the district attorney of the seventh judicial district to enter a *nolle prosequi* in certain criminal cases arising out of the Sacramento squatter riots on the ground that it was a legislative interference with power properly belonging to the judicial department of the government. The senate, to whom the message was sent, probably took a different view of the subject; but the veto seems to have had the effect of stirring up some of the old anti-squatter rancor, which the act was intended to allay; and that body by seven to six refused to pass it over the veto. About the same time Jonas Winchester, the state printer, resigned his office and gave as a reason that at the rates allowed and on account of being compelled to receive warrants, which were not worth more than forty per cent of their face value, he could not pay his men and carry on the work. A few days afterwards McDougal informed both houses of the legislature that he had appointed James B. Devoe state printer in place of Winchester. Upon this a resolution was at once introduced in the senate, declaring that the governor had no legal authority to appoint a state printer while the legislature was in session; and upon vote it was unanimously adopted. The

¹Journals of Legislature, 1851, 1132, 1301-1303, 1358, 1359.

²Journals of Legislature, 1851, 454, 1726.

assembly simply laid the governor's message on the table and left it there. A few days subsequently a temporary arrangement was made with Devoe to do the printing for the session; and on May 1, just before final adjournment, each house held an election for a state printer, which resulted in the choice of Eugene Casserly.¹

The matter of state printing, as well as that of state printer, occasioned much controversy and contention in the legislature of 1851. Very early in the session Alonzo W. Adams introduced into the senate a bill to abolish the office of state printer and to let out the public printing to the lowest bidder. About the same time he wrote a letter to the committee on printing, in which he showed that the printing of the statutes and journals of the legislature of 1850 had been done in New York and that upwards of one hundred and thirty-four thousand dollars had been paid the state printer between March 16, 1850, and January 4, 1851. He charged that the office on account of its lucrative character was sought after by incompetent and unfit persons as a reward for party services, and that the public printing could be better done in California and for forty per cent of what was then being paid. On March 26, 1851, an act was passed reducing the price of composition and press work forty per cent; and the next day the state printer resigned his office, as before stated, on the alleged ground that his earnings would not pay the wages of honest labor, and he preferred resigning to being the means of depressing honest labor in California. In view of the facts disclosed by Adams in his letter, it seems likely that Winchester might very well have continued in his office under the new act without much loss either to honest labor or to himself; but, whether so or not, Casserly, as his successor, got out the journals and statutes of 1851; and no one ever heard of his earnings not being sufficient to pay himself as well as the wages of his employees.²

Unfortunately for the state, Adams, the person who thus unveiled the extravagances of the state printing department and thereby drew down upon his own head the envenomed hatred of every individual who was injured by his exposures, had been a

¹ Journals of Legislature, 1851, 353-360, 1791.

² Journals of Legislature, 1851, 63, 491, 581, 705, 753, 1791.

collector of foreign miners' license taxes in Butte county and when he took his seat as senator still owed the state as such a balance of upwards of five thousand dollars. About the same time he commenced his attack upon the state printing department, he fully settled up his accounts with the state treasurer by the return of unsold licenses remaining in his hands for which he had been charged. But notwithstanding this settlement, a newspaper of San José, incited by his enemies, made charges reflecting upon his official conduct as collector; and, at his request, a committee was appointed to investigate his accounts. On April 30, the day before the close of the session, when the committee was about to make its report, Adams resigned his seat as senator on the plea that he was obliged to visit the Atlantic states; and the report of the committee and other papers connected with it were thereupon directed to be sealed up and deposited in the office of the secretary of state. Whatever the truth may have been as to Adams' conduct as a tax collector, the result of his beneficial attack upon the extravagances of the state printing department was not calculated to encourage others to rush forward for the public good; and his example in this respect, however worthy of admiration and imitation, has not been followed as often as it ought to have been.¹

But, notwithstanding the idiosyncrasies of the governor and the animosities engendered by Adams' attempt to repress official extravagance, the legislature of 1851 did much important and beneficial work. Among its longest and ablest statutes were an act to regulate proceedings in civil cases and an act to regulate proceedings in criminal cases, known respectively as the civil practice act and the criminal practice act of California. They were based upon the then latest reforms in legal procedure and constituted for the next twenty years and upwards, with comparatively little amendment, the law of practice in all the courts of the country, the model of the practice acts for all the other states west of the Rocky Mountains and the organic and fundamental substratum upon which was moulded the subsequent portions of the codes relating to the same subjects.² One of the

¹ Journals of Legislature, 1851, 63, 64, 309, 476, 479, 596, 598, 774.

² Hittell's Gen. Laws, 1588, 4939.

next important statutes was a liberal act, which has not been amended much since its passage, concerning divorces. There was considerable controversy upon this subject. The previous legislature had failed to pass a divorce law; and, when the matter came up in the assembly, that body, after a long debate, passed the bill by a vote of only seventeen ayes to sixteen noes. In the senate the bill was referred to a select committee, of which Elcan Heydenfeldt presented a majority report against the bill, pronouncing it unconstitutional and urging that it was inexpedient to legislate upon the subject. It claimed that the constitutional provision that no divorce should be granted by the legislature deprived the legislature not only of granting a divorce but also of granting the power to the courts to decree divorces. It seemed to admit that the courts could grant divorces, as at common law, for causes existing before marriage presenting insuperable obstacles to entering into the marital relation. But it claimed that the marriage contract was a religious sacrament indissoluble except by death, and that it should never be dissolved except by death. On the other hand George B. Tingley submitted a minority report in favor of divorces, showing that the reasoning of the majority was not logical and claiming that there were various cases in which the marital obligation became a distressing burden to the parties and a festering curse to the community.¹

Heydenfeldt next presented a petition of a number of residents of San José against a divorce law, followed a day or two afterwards by a similar petition from residents of San José Mission, and a third from residents of San Francisco, all of which were referred to the select committee; and Heydenfeldt as its chairman reported in favor of the petitions and recommended that the bill should be rejected. But the senate refused to act on his recommendation. Heydenfeldt appears then, as chairman of the select committee and evidently with a view of strengthening his cause among certain classes of the community, to have invited Rev. O. C. Wheeler, a Baptist preacher, to deliver a sermon against divorces. There is no reason to believe that anything Wheeler could have said would have produced much effect; but

¹Journals of Legislature, 1851, 89, 100-121, 656-668.

the fact that Heydenfeldt had resorted to such an expedient as inviting a sermon in the name of his committee on a subject pending before the senate provoked much adverse comment and drew down upon him a resolution, adopted by six votes to four, that he had exceeded his powers and in effect censuring him therefor. The bill was then bitterly fought inch by inch, but was finally passed in the senate by a vote of seven ayes to three noes; and on March 26 it received the signature of the governor and became a law. On the next day notice was given in the assembly that a bill would be introduced to repeal the act thus passed; and a week or two afterwards such a bill was presented and passed the assembly by a vote of eighteen ayes to eleven noes; but when it reached the senate, it was indefinitely postponed by a vote of seven ayes to two noes.¹

Another important statute passed by the legislature of 1851, which has in substance continued in force in California to this day and which has given rise to a long, interesting and important series of decisions by the supreme court, was the homestead act. A bill to exempt a homestead and other property from forced sale in certain cases had been presented in the assembly of 1850; but it had failed to pass and the subject was postponed. The same bill was on January 17, 1851, introduced into the senate, where it was very fully discussed, amended in various particulars and at length, in the form of a substitute bill which had been adopted in the assembly, passed by a vote of nine ayes to four noes. In the assembly the substitute had been passed by a vote of sixteen ayes to ten noes, when Samuel A. Merritt moved to amend its title so as to read "A bill to prevent the collection of debts;" but his motion was indefinitely postponed by a vote of seventeen ayes to nine noes; and on April 22, 1851, the bill was signed by the governor and became a law.² Another act, very different in its purview but in one sense intended for the somewhat similar object of providing against improvidence, and equally with the homestead act demanded by a special provision of the constitution, was the act to prohibit lotteries. It was introduced into the senate by David C. Broderick on January 9 and passed

¹ Journals of Legislature, 1851, 131, 349, 404, 960, 1417, 1535, 1580.

² Journals of Legislature, 1851, 62, 105, 109, 399, 1495-1498, 1654.

that body on January 16, 1851. The assembly a few days afterwards made certain amendments, which the senate refused to accept; and there had to be a conference committee and some compromise before an agreement could be reached. The act as passed became a law on March 11, 1851. Though it had to be explained by a new act in 1854 and was afterwards superseded by much broader legislation on the same subject, it served as the beginning of a steady and persistent effort, so far at least as legislative provisions are concerned, to carry out the constitutional provision.¹

It can not be said, notwithstanding these efforts to prevent lotteries, that the Californian community had advanced far enough to relinquish gambling. This was shown not only by the opposition manifested to the lottery bill, but still more so by a renewed and, as it proved, successful attempt in this legislature to license gaming. A bill to this effect was introduced into the senate by Thomas B. Van Buren on March 4 and passed that body on March 8. The assembly passed it with some amendments a few days afterwards; and it was signed by the governor on March 15, 1851. About two weeks subsequently it was amended in some particulars and continued to be the law until April 17, 1855, when it was repealed by an act to suppress gaming, which in the course of a few years was followed by more and more stringent laws in the same direction.² In this connection, it may be added that on March 19, 1851, Elisha O. Crosby presented a memorial of citizens of San José, praying for laws prohibiting gambling altogether as well as various other offenses against public morals; but the legislature paid no attention to it. A much more effective petition was presented from citizens of El Dorado county, praying that horse, mule or ox stealing might be made a capital offense punishable summarily by hanging. In response in part at least thereto, an act was passed on April 22, 1851, making robbery and grand larceny punishable by imprisonment in the state prison "or by death in the discretion of the jury" and petty larceny by imprisonment in the county jail or fine "or

¹Journals of Legislature, 1851, 44, 61, 69, 101, 282, 310; Hittell's Gen. Laws, 4407.

²Journals of Legislature, 1851, 282, 297, 308; Hittell's Gen. Laws, 3322-3338.

by any number of lashes not exceeding fifty upon the bare back or by such fine or imprisonment and lashes in the discretion of the jury"—and so the law remained until 1856.¹

The most exciting subjects, however, which were considered at the session of the legislature of 1851 were the so-called water-lot act of San Francisco and the removal of the state capital. The first, embracing the grant to the city of San Francisco for ninety-nine years of the lands covered by the tides on the city front, which has already been adverted to and described in speaking of the progress of San Francisco, gave rise to much controversy and some bitter charges. A bill providing for the granting of certain public lands in San Francisco, which had been sold under the so-called Kearny grant of 1846, and quieting the title of claimants thereto was first introduced into the senate on February 1 by Heydenfeldt. The judiciary committee, to whom it was referred, reported a substitute, which was passed by a vote of eleven ayes to two noes on February 5. When the bill reached the assembly, it was referred to a special committee, of which Benjamin F. Moore was chairman; and he on March 10, as such chairman, presented an able report, holding that no title and substantially no equity had been acquired by purchasers under the Kearny grant and that the right to the control and management of the property resided exclusively in the state. He therefore reported another substitute; but the assembly rejected it, at the same time materially amending the senate bill and in many respects making it conform to Moore's substitute. Upon returning to the senate the bill was again amended and passed; but this passage was reconsidered and the bill again amended and passed; and finally on March 26, 1851, it became a law.

About the time of the passage of this act, grave charges of corruption were made and became so frequent that on April 11, Duncan W. Murphy, a member who had voted for the bill, introduced into the assembly a resolution which was adopted, directing an inquiry as to whether any member of the house had been influenced in his action or vote by a promise of reward; and a

¹Journals of Legislature, 1851, 91, 101, 328; Hittell's Gen. Laws, 1459-1461 and notes.

committee of five with Murphy as chairman was appointed by the speaker to make the investigation, with full power to send for persons and papers. But it appears that the credit of the state was not sufficiently good to insure the attendance of witnesses; and the next day H. S. Richardson moved that each member of the house should contribute to the sergeant-at-arms his pro rata of the amount required to summon and pay witnesses; but, on motion of Gaven D. Hall and after some wrangle, a substitute was adopted dissolving the committee and recalling all writs and processes issued. Notwithstanding this action, Drury P. Baldwin on the same day introduced a resolution asking for a committee to inquire whether any charge of corruption or bribery had been made against any member which demanded investigation. A committee, with Baldwin as chairman, was accordingly appointed. It reported on May 1, the last day of the session, that, if it had had time, it believed facts of a startling character would have been elicited; but, as it was, the most important witnesses failed to appear and there was no time left to coerce their attendance. Such testimony as had been taken accompanied the report. On motion of Stephen J. Field the report and accompanying documents were laid on the table; and later in the day, on motion of John Bigler, the testimony presented was directed to be erased from the journals and filed in the office of the secretary of state.¹

Still more exciting and bitter than the water-lot controversy was that in reference to the removal of the state capital. This contest had in effect commenced in the legislature of 1850. The question of removal from San José being moved, a number of propositions were offered—one from the citizens of Monterey, another from those of San José, another from Jonathan D. Stevenson and W. Parker, the proprietors of an obscure place near the mouth of the San Joaquin river called New York on the Pacific, and another from Mariano G. Vallejo. All were more or less schemes for private advantage; but the grandest was that of Vallejo. He represented himself to be the owner of extensive lands on the Straits of Carquinez and Napa river

¹Journals of Legislature, 1851, 103, 110, 116; 1329-1333, 1348-1351, 1447, 1579, 1584-1586, 1588, 1793, 1794, 1813.

and proposed, if the permanent seat of government were located there, to lay out a city, to be called Eureka or such other name as the legislature might suggest and to donate to the state, free of cost, one hundred and fifty-six acres of land for public buildings, including a state university and botanical garden, a state penitentiary, schools, hospitals and asylums; and also to give, within two years after the acceptance of his proposition three hundred and seventy thousand dollars for the erection of buildings. All the propositions having been sent to the committee on public buildings and grounds, David C. Broderick, chairman of that committee, reported in favor of Vallejo and went so far as to say that his proposal breathed throughout the spirit of an enlarged mind and a sincere public benefactor, for which he deserved the thanks of his countrymen and the admiration of the world, and that it looked more like the legacy of a mighty emperor to his people than the donation of a private planter. He therefore recommended the submission of the question of removal of the capital to a vote of the people; and in accordance with his recommendation an act to that effect was passed on April 22, 1850.¹

At the general election of October 7, 1850, at which the proposition was submitted, there were ten thousand seven hundred and twenty-nine votes on the subject, of which seventy-four hundred and seventy-seven were in favor of Vallejo as against twelve hundred and ninety-two for San José, three hundred and ninety-nine for Monterey and the rest scattering; but not one for New York on the Pacific. On January 14, 1851, as soon as the legislature of that year got into complete working order, Martin E. Cooke, senator from Solano and adjoining counties, presented in the senate a communication from Vallejo stating that he was prepared to enter into bonds with ample security for the fulfilment of his proposition made to the last legislature for the location of the permanent seat of government at the city of Vallejo, and the next day he procured the adoption of a resolution requesting the surveyor-general to report on the peculiarities of the different locations offered. Ten days afterwards Charles J. Whiting, surveyor-general, reported, in a remarkably short, inadequate

¹ Journals of Legislature, 1850, 412, 498-570.

and unsatisfactory document, that he had visited Vallejo, New York on the Pacific and San José; that the first was on the great traveled route from San Francisco to the mining regions, with a good harbor; that the same might be said of New York on the Pacific; but that as to San José, the communication from San Francisco would during the rainy season be very unpleasant, to say the least of it, though the route was well adapted for a railroad, the construction of which would obviate the difficulty. On January 17, Cooke presented a bill for the permanent location of the seat of government at Vallejo, and at the same time made a majority report of the committee on public buildings altogether in favor of Vallejo as in every respect the best place for the capital and the choice of nearly the entire people.¹

A few days after Cooke's report, George B. Tingley, senator from Santa Clara and Contra Costa counties, presented a minority report of the committee on public buildings on the same subject. He pronounced Vallejo's proposition deceptive, looking handsome when arrayed in tall columns of figures in a newspaper, but in fact only a speculative project and financial operation by which the state and its people were to be made to suffer. He denied the statement of Cooke that a very large majority of the people had voted for Vallejo and, called attention to the fact that though ten thousand may have voted for it and a few thousand against it, at least forty thousand did not vote at all on the question. He insisted that San José was inland, pleasant, easy of access, and with comfortable buildings already erected, whereas, if Vallejo possessed the peculiar advantages for a large commercial city claimed by its advocates, why was it that the keen eyes of Californian city builders had not long ago detected the fact? Its bare and treeless hills had been in open and notorious view ever since San Francisco, Sacramento and Stockton had sprung into existence; and yet all its great and overwhelming advantages had remained hidden and the march of improvement had left no mark there. There was not a building on the ground, nor was there any assurance that any could or would be provided for legislative purposes by the time the state would need them. As a matter of fact the scheme was an ingeniously devised job, well

¹Journals of Legislature, 1851, 59-61, 560, 561, 645.

calculated to carry out a good bargain for Vallejo and company; but a bad one for the state. It was a proposition which would cost the people some four hundred thousand dollars in order to reach three hundred and seventy thousand dollars two years afterwards, if in fact ever reached. The land offered was not worth over five dollars per acre; and, besides, no deed of it to the state had been tendered; nor was it at all certain that Vallejo could make a good title thereto. For all which reasons, among others, Tingley protested against the bill and the report in its favor.¹

On January 23, when the matter came up again, Cooke presented another communication from Vallejo, pledging himself, in case the permanent seat of government were located at Vallejo, to furnish buildings for state offices at twenty-five per cent less than the state was then paying at San José, to be ready June 1, 1851, and rooms for legislative purposes for the next three sessions of the legislature free of charge. As an off-set to this, Crosby about the same time presented a proposition of citizens of San José tendering the use of suitable rooms for state offices, free of cost until the state should erect such buildings as might be desired, provided the seat of government should remain there. The Vallejo bill was then taken up and, on motion of John J. Warner, amended by adding to the proviso concerning a bond a further proviso that Vallejo should provide a state house and other state offices equal or better than those then occupied, without expense to the state, for three years; and it was further amended, on motion of Tingley, by a third proviso that if Vallejo failed or refused to comply with the terms of his proposition in whole or in part, the act should be void. In that form it passed the senate by a vote of eleven ayes to two noes, Crosby and Tingley. The latter then moved to amend the title of the bill so that it should read, "An act taxing the people of the state of California in the years 1851 and 1852 the sum of \$370,000 to enable M. G. Vallejo & Co. to pay that amount back to the state in the year 1853 without interest." The president, David C. Broderick, decided the proposed amendment out of order for the

¹ Journals of Legislature, 1851, 648-654.

reason that it was disrespectful in language. From this ruling Tingley appealed; but the senate sustained the decision.¹

The bill was rushed through the assembly and on February 4 received the approval of the governor and became a law. Cooke then presented another communication from Vallejo inclosing a bond in the sum of five hundred thousand dollars for the faithful performance of his contract, signed by himself with his son-in-law John B. Frisbie, his brother Salvador Vallejo, Robert Allen and James M. Estell as sureties. In the affidavits attached to this bond Vallejo swore that he was worth in property real and personal one million of dollars over and above all liabilities or demands against him and that his entire estate was unincumbered; Frisbie swore in the same manner to seventy-five thousand dollars; Salvador Vallejo to two hundred and fifty thousand; Allen to one hundred thousand, and Estell to sixty thousand. In reply Tingley of the judiciary committee objected to personal security and recommended mortgage security on property worth at least five hundred thousand dollars. He said that the men of hundreds of thousands of dollars of to-day in California were the assignors and bankrupts of to-morrow and that it would be extremely hazardous on the part of the state to take the mere personal guaranty of any man or set of men for so large a sum of money. He also objected to the bond because it did not bind Vallejo to furnish a state house and state offices for three years free of charge, as he had proposed, and because it did not furnish any sufficient security for the payment of the money agreed on. But while Tingley was thus fighting against the proposition, Vallejo presented to the governor a deed for an indefinite number of acres of land in the city of Vallejo, to be selected by five commissioners, of whom he named General Persifer F. Smith and John B. Frisbie and asked the legislature to name three others. In answer to this request the senate appointed Thomas J. Green and the assembly Drury P. Baldwin and R. F. Saunders; and on March 25 these commissioners reported that they had made selections. They said they had placed the capitol, the governor's house, the university and several other public institutions on an elevated hill immediately above the secure and

¹ Journals of Legislature, 1851, 78-82.

commodious harbor of Napa bay, from which on a clear day might be seen the city and shipping of San Francisco, distant about twenty miles; they pronounced the site a commanding position, with fine building materials on one of the best harbors in the world and with a neighborhood of unsurpassed fertility; and they believed a better location could not be made. There might be some question, they continued, as to whether a more secluded situation would not be better for the university; but modern experience had taught "that a youth, during his collegiate course, would gain more information from the legislative debates than from the ablest professorships." On the other hand they reported that they had selected a place for the lunatic asylum conveniently near where the unfortunate inmates might have the "advantages of the stir from the great highway or rural quiet, as the medical faculty might prescribe." As a site for the penitentiary they selected the nearest prominent hill on the Straits of Carquinez for the reasons that it contained excellent building material, that it was near deep water, and "last though not least, that its formidable walls, immediately on the great highway to our inexhaustible gold mines, will stand as a warning to the ship-loads of rascals congregating hither from the penal colonies of other nations."¹

Though there were several petitions against the removal of the capital to Vallejo, and though it seemed very plain, from the unsupported and in many respects untrue statements made in reference to Vallejo by the projector of the scheme and his supporters in as well as out of the legislature, that almost every statement made by Tingley against it was correct, the report of the committee was adopted and Vallejo thus chosen as the future capital. But the manipulation of the project did not, any more than those of the San Francisco water-lot business, pass unchallenged. Charges of corruption and bribery were rife; and on April 11, Isaac N. Thorne of the assembly asked for a committee of investigation on the subject. The result was the appointment of such a committee; and there can be little or no doubt, if the matter had been properly pursued, that facts quite as startling as any in the water-lot scheme would have been

¹Journals of Legislature, 1851, 113, 114, 709, 717, 727-729, 1084.

elicited. But the next day, on motion of Hall, the committee was dissolved; and the subject for the time was dropped.¹

Two attempts to impeach district judges were made at this session of the legislature. The first was in the case of Levi Parsons, judge of the district court of the fourth judicial district, who was charged with unjust, oppressive and unlawful conduct in committing William Walker for alleged contempt of court, as has been already stated. After much controversy and taking of testimony, the assembly finally on motion of Baldwin determined, by a vote of seventeen ayes to twelve noes, that the testimony adduced did not sustain the charges or warrant any impeachment. The second was the case of William R. Turner, judge of the district court of the eighth judicial district, who was charged with much the same kind of conduct towards Stephen J. Field. In this case too, there was much controversy and testimony, and the matter occupied considerable attention; but finally, on motion of Thorne, it was indefinitely postponed by a vote of fifteen ayes to twelve noes. Subsequently, on motion of John Bigler, the testimony in both these cases of attempted impeachment, like that in reference to bribery and corruption in reference to the water-lot bill, was ordered erased from the journals of the legislature and filed in the office of the secretary of state.²

When McDougal on January 9, 1851, became governor to serve out the unexpired term of Burnett, there was of course a vacancy in the office of president of the senate. This was filled on the same day by the election of David C. Broderick, who continued to fill the position for the remainder of the session. John Bigler was speaker of the assembly, to which office he was elected on the first day of the session, January 6. Each made a good presiding officer and each at the end of the session received a vote of thanks for the able and impartial manner in which he had acted. It was still the custom of members to smoke tobacco in the legislative halls; but on March 27, John Cook in the assembly offered a resolution providing, among other things, that whereas order and decorum were not observed, and whereas

¹ Journals of Legislature, 1851, 1581-1586.

² Journals of Legislature, 1851, 1374, 1638, 1646, 1813.

the house had no rule prohibiting smoking during business hours, and whereas this improper practice was indulged in to a disreputable extent, not only by members but others who had privileges within the bar, therefore it should be the duty of the speaker to forbid any person from smoking during the sessions. A motion to indefinitely postpone was defeated by sixteen to eleven, when John S. Bradford offered as a substitute a simple resolution that smoking should not be permitted within the hall during sessions of the assembly. The next day a motion to indefinitely postpone the whole subject was lost by a vote of fourteen to thirteen; but a motion to lay both the resolution and substitute on the table prevailed by a vote of seventeen ayes to eleven noes—and there they continued to lie. In the senate on the contrary, though not until April 17, near the end of the session, it was on motion of Pablo De la Guerra ordered that neither smoking nor chewing should be allowed within the bar of the senate during the remainder of the session.¹

Both Broderick and Bigler made a few valedictory remarks in their respective houses at the end of this legislature. Bigler reviewed the work that had been done and said that over two hundred bills had been reported and received first and second readings, of which about one hundred and twenty had been passed and approved. Many very exciting and highly important questions had been considered and determined. Their discussions had been marked by one or two occurrences of a rather unpleasant character, but explanations perfectly satisfactory to all concerned had followed and good feeling was speedily restored. He said that the session had been longer than expected; but it might be said in justification that no legislative body had ever in one session disposed of so many important measures. Much of the legislation of the previous session had been reviewed; many laws then approved had been repealed and others, more in accordance with the necessities of the people, matured and passed. The judicial and revenue systems of the state had been revised and many important changes made. A judicious system of common schools had been formulated and ample provision made for the indigent sick by the establishment of hospitals at

¹Journals of Legislature, 1851, 48, 418, 778, 1442, 1452.

important points in the state. Such were Bigler's declarations; but it is to be remarked that he was only partly right in them and therefore partly wrong. He was wrong in comparing the work of 1851 with that of 1850 and wrong in intimating that it was more important or better done than that of 1850. He was wrong in stating that there had been a judicious system of common schools devised or ample provision made for the indigent sick. But he was right in saying that much important work had been done and that, considering the importance and exciting character of many of the measures discussed, the deliberations of the assembly had been characterized by generally good feeling.¹

The legislature of 1851 had scarcely adjourned before public attention began to be attracted to the election of a new legislature and a complete set of new state officers. By an amendment of the recent session, the general election was to take place on the first Wednesday in September, which was little more than five months distant. Political parties can hardly be said to have been as yet fully formed or organized. There were a great many Democrats or men who called themselves Democrats in the country, and almost as many Whigs; but the differences between the two were recollections brought from the Atlantic states of issues of a couple of years previous, rather than active and living issues of the day. The intense and bitter differences between the Republicans and Democrats of a few years afterwards, and particularly during the civil war, were as yet unknown. The question of slavery had not become of absorbing interest. Though the Republican party of a later day was to a great extent the successor of the Whig party of the time of Henry Clay, the Whig party of Henry Clay's time embraced many of the most decided pro-slavery men; while the Democratic party of that time contained many men who became active and persistent Republicans. Almost all were more or less violently opposed to abolition and anti-slavery agitation. An attempt was made to excite a contest on the old political issues and to stir up what might be called a regular old-time Whig and Democratic fight; but though conventions were held and tickets

¹Journals of Legislature, 1851, 1804.

nominated under the old names, the strife was rather between persons than measures; and only occasionally were glimpses to be caught of the deep-down, underlying fundamental questions of paramount interest, which were looming up and as it were dimly casting the shadows of coming events before them.

At their respective conventions held not long after the adjournment of the legislature, the Democrats nominated John Bigler for governor and Samuel Purdy for lieutenant-governor, while the Whigs nominated Pearson B. Reading for governor and Drury P. Baldwin for lieutenant-governor. The election took place on September 3, 1851. Afterwards on January 8, 1852, when the next legislature met in convention for the purpose of counting the votes, Henry A. Crabb of the assembly called attention to the fact that the clerks of some of the counties had not complied with either the constitution or the laws in reference to the sealing up and transmission of the returns, thereby giving rise to doubts as to their correctness; and he therefore moved the appointment of a special committee, with power to send for persons and papers, to examine the returns and report upon them. The motion was, however, laid upon the table by a vote of sixty-five ayes to sixteen noes. The returns were then canvassed; and it appeared therefrom that Bigler had received fifteen thousand six hundred and fourteen undisputed and seven thousand five hundred and sixty disputed votes, and Reading fifteen thousand two hundred and forty-four undisputed and seven thousand four hundred and eighty-nine disputed votes; while Purdy had received sixteen thousand four hundred and sixty-four undisputed and seven thousand nine hundred and thirty-four disputed, and Baldwin thirteen thousand seven hundred and thirty-two undisputed and seven thousand two hundred and twenty-seven disputed votes. The tellers thereupon reported the majority of Bigler for governor as three hundred and seventy undisputed and seventy-one disputed votes and that of Purdy for lieutenant-governor as two thousand seven hundred and thirty-two undisputed and seven hundred and seven disputed votes. No attempt was made to ascertain whether a correct consideration of the disputed votes might not change the result; and accordingly

Bigler and Purdy were declared the duly elected governor and lieutenant-governor of the state for the ensuing two years.¹

The legislature of 1852 convened, in accordance with the recent act for the permanent location of the seat of government, at Vallejo on Monday, January 5. The senate, which among its newly elected members embraced James W. Denver, James M. Estell, Philip W. Keyser, Joseph C. McKibben, Philip A. Roach, Frank Soulé and Royal T. Sprague, was called to order by Broderick, the president of the last senate. Tingley at once presented a protest against the organization of the legislature at Vallejo, basing his objections chiefly on the same grounds urged by him at the recent session against the law and on the further grounds that Mariano G. Vallejo had not complied with his contract; that the law was conditioned upon such compliance and ineffective until then, and that any and all legislation done at Vallejo previous to a full compliance with the law would be wholly nugatory. This protest, which was also signed by Frank Soulé, was entered on the journal. It was followed two days afterwards and just before Bigler was inducted into office by a somewhat similar protest from Governor McDougal. He declared that the legislature was required by the constitution and laws to convene at the seat of government; that Vallejo was not yet the seat of government because the law removing it from San José had not been complied with for the reason, among others, that the buildings at Vallejo had by the agent appointed to report thereon been shown to be not so good as those occupied by state officers at San José, and that therefore San José still remained the seat of government. But the senate was little disposed to hear from the retiring governor and promptly, on motion of Van Buren, laid his protest on the table, where it remained.²

McDougal's first and only annual message was presented to the legislature on January 7, 1852, at the same time that he sent in his protest before referred to. In this document he congratulated the state that its admission as one of the United States had had the effect to a great extent at least of quieting the agitation

¹ Senate Journal, 1852, 22-24.

² Senate Journal, 1852, 5-12.

that had threatened the destruction of the Union. He believed that the compromise measures, which had accompanied it, were calculated to place the nation upon a more lasting and enduring basis than before. He therefore recommended a strict adherence to them, with a view to setting at rest the vexed question of slavery, and suggested that laws should be passed to effectually carry out those provisions of the compromise relating to fugitive slaves. He next called attention to the operation of the revenue laws and what he called the inequalities of taxation as compared with representation in different parts of the state. The six southern grazing counties, with a population of six thousand three hundred and sixty-seven persons, paid into the treasury as taxes on real and personal property for the last fiscal year nearly forty-two thousand dollars, while the twelve mining counties, with a population of one hundred and nineteen thousand nine hundred and seventeen persons, paid only about twenty-one thousand dollars. The latter had a representation in the legislature of forty-four, while the former had but twelve. Again, taking all the agricultural counties together, as distinguished from the mining counties, the former, with a population of seventy-nine thousand seven hundred and seventy-eight, paid upwards of two hundred and forty-six thousand dollars, while the latter, as said before, with a population of nearly one hundred and twenty thousand, paid only about twenty-one thousand. It was true the capitation tax assessed in the twelve mining counties was fifty-one thousand four hundred and ninety-five dollars, while that assessed in the six southern grazing counties was only seven thousand two hundred and five; but the amount actually collected in the mining counties was only three thousand five hundred and eighty dollars, while that collected in the grazing counties was three thousand nine hundred and eighteen and a half, so that the six thousand three hundred and sixty-seven population of the grazing counties paid three hundred and thirty-three and a half dollars more than the one hundred and twenty thousand population of the mining counties. In view of these facts, and as it was plain that such a condition of things could not last long without great danger to the peace and prosperity of the state, and as it further appeared evident to his mind

that there was no remedy for the evil while the constitution provided, as it did, that "all laws of a general nature shall have a uniform operation" and that "taxation shall be equal and uniform throughout the state," he recommended the calling of a convention for a revision of the constitution and for the "discussion, understanding and, as far as possible, obviation of the inconveniences of whatever nature, arising from the imperfections of that instrument."

He next addressed himself to the subject of education and its importance not only in itself but particularly as a means of inducing immigration. If a good, active and effective system were once established and the fact made known abroad, one of the strongest objections to residence in the state would be removed. The class of people which it would bring would be most valuable. It would induce the presence of families who would remain and grow up with the institutions of the country. "Such a desirable result," he continued, "can be accomplished. We have the means within our reach of establishing upon this western soil the most magnificent system of education in the world. Perhaps it would not be saying too much to assert that there never was a finer opportunity presented for engrafting upon the institutions of a state an educational system that should be an honor to the public and a blessing to the people than is now possessed by California." He next called attention to the public lands granted to the state by the several acts of congress upon that subject. By an act of September, 1850, all the swamp and overflowed lands lying within the several states had been given to those states respectively for the purpose of reclamation. The quantity of such land within the state of California amounted to from six to ten millions of acres. To enable the state to avail itself of the benefits of this grant at the earliest moment, he had communicated with the proper authorities of the general government, asking that the state surveyor-general might be authorized to select such lands; and, in view of the probability of the request being granted to this state as it had been to others, he suggested the passage of a law enabling the surveyor-general to make such selections. He also recommended a law securing to each settler, who might locate in good faith, a suitable quantity of such land for a home-

stead. In reference to the large bodies of overflowed land, designated as tule swamps, he recommended a system of grants on condition of reclamation within a certain time. "By this course," he went on to say, "a large portion of the state, now lying in a useless condition, would be made productive, contribute largely to the state treasury and induce a further immigration and settlement of the Chinese—one of the most worthy classes of our newly adopted citizens—to whom the climate and the character of these lands are peculiarly suited. The draining of these lands would also add largely to the health of the country in their vicinity. When thus drained, the tule lands, comprising the larger portion of the grant under the act referred to, will become the most desirable lands in the state and capable of producing, in the highest degree of perfection, rice, sugar-cane and other staple products, which cannot be grown in other portions of the state."

The rest of the message was made up of various expressions of opinion and recommendations, which he seems to have supposed were reflections of public sentiment. He pronounced the judicial system of the state complicated, incongruous, calculated to defeat the very object of law—which in his opinion was the prevention of controversy—burdensome to the people, unnecessarily expensive and highly inconvenient. He therefore recommended the appointment of a commission for an entire revision of the laws. In the same connection he called attention to the fact that there were eleven judicial districts and thirty district attorneys; and he recommended that the judicial districts should be enlarged, so as to reduce the courts in number; that only one district attorney should be appointed in each district, and that he should receive his compensation in the way of fees and not as salary out of the treasury. He was opposed to any and every proposition to sell or lease the mines and declared that they should be left free; but it would be well, he said, to take some effective measures against the ingress of foreign criminals, who had for several years been flooding the state from the penal colonies of England and other countries. He charged that great injustice was done California by the general government by the imposition of onerous and exorbitant rates of postage and the neglect to supply its coasts and harbors with light-houses, buoys, dry-docks and other aids to

commercial and mercantile interests. He recommended the election of successors to the members of congress, whose terms were to expire the next year, and enlarged upon the neglect of congress to provide a branch mint, the want of a suitable building for the deposit of the arms and ammunition of the state, the necessity of providing for the insane in some other institution than the Sacramento hospital and the desirability of having a geological survey of the country. Another subject, towards which the large majority of the people of the entire country were looking with anxiety and interest, he said, was the commencement of some work that would insure rapid communication between the eastern and western portions of the Union. The undertaking had been started by a railway from the western part of Missouri; and it was to be hoped that congress would aid in forwarding the gigantic project to speedy completion. The advantage of such a work could scarcely be conceived. The government possessed immense bodies of fertile but waste and untenanted lands; and by appropriating those portions lying on the line of communication, the value of the remainder of the public domain would be increased and the national interests in general greatly advanced.

He stated the outstanding obligations of the state on June 30, 1851, the end of the fiscal year, to be eight hundred and seventy-one thousand dollars, of which one hundred and sixty-five thousand represented state bonds, issued under the act of February 1, 1850, drawing interest at the rate of three per cent per month. He characterized such interest as onerous and ruinous and recommended the speedy and complete redemption of the bonds. And after a few further remarks, including something about the Bear Flag movement, of which he adopted an incorrect version, and something about the removal of the Indians out of the state and the payment of Indian war bonds, he wound up with stating that, in accordance with a law of the last session, he had placed Mariano G. Vallejo and James M. Estell in possession of the convicts sentenced to imprisonment in the state prison—at the same time advocating the erection of a suitable building for their better security. He recommended an appropriation for a state library, and in conclusion begged to be permitted to mingle his congratulations with those of the legislature upon the future

greatness and prosperity, which awaited the young and glorious state of California by a proper and judicious management of its affairs.¹

Immediately after the reading of the above-mentioned document in the senate, a motion was made by Tingley and adopted to print five thousand copies of it in English and three thousand in Spanish; but the next day, on motion of the same, the vote was reconsidered and the whole subject laid on the table. The assembly, however, was more complaisant and, in ordering three thousand English and one thousand Spanish copies of the incoming governor's inaugural, provided for the same number of the outgoing governor's message. In the meanwhile, just before the installation of the new governor, McDougal, as a final communication to the legislature, deemed it proper to transmit a formal message resigning his office of governor. This action was one of the freaks, to which he was at almost any time liable. The senate at first, without paying much attention to the matter, received the message and ordered it to go into the journal, but the next day, on further consideration, struck it out; and with this his career as a factor of any importance in Californian affairs closed.²

Upon vacating his office McDougal passed, to a very great extent, out of public notice. He was still known as "I, John," and people talked about his peculiar doings and sayings, one of which was that he was afraid of no one except God Almighty and Mrs. McDougal, though the lady was by no means one to be afraid of; but otherwise nobody paid any great attention to him. He was never again taken up as a candidate; and he doubtless would have received very few votes if he had been. Though his natural abilities were good and though he was under ordinary circumstances a fair conversationalist and an affable and sociable companion, there was no steadiness in his character and he could not be relied on from one day to another. But while generally peaceably inclined, he was often quick-tempered. He fought at least one duel for trivial cause and was always ready, when at all excited, to get into personal difficulties. Unfortu-

¹ Senate Journal, 1852, 11-22.

² Senate Journal, 1852, 22-27; Assembly Journal, 1852, 32.

nately he was addicted to strong drink and too often, when his head should have been clear, acted under its influence. This habit seems to have grown upon him and in the course of a few years undermined his otherwise vigorous and robust constitution. Though never, properly speaking, insane, his mind became affected and he did things for which he could hardly be said to be responsible. As his health began to give way, he imagined that he was going to die a horrible death and at least once, and according to some accounts several times, attempted to commit suicide. He died in San Francisco on March 30, 1866, from a stroke of apoplexy.¹

¹ San Francisco newspapers of March 31, 1866.

CHAPTER III.

BIGLER.

JOHN BIGLER, the third state governor, was born near Carlisle in Pennsylvania on January 8, 1805. He belonged to a family of talent, which gave a governor to its native state as well as to California. He became a printer by occupation, but soon rose to be an editor and then studied law and was admitted to the bar in 1840. In 1849, having in the meanwhile married and had a daughter, he came out overland, accompanied by wife and child, to the far-off Pacific and settled at Sacramento. At first he turned his attention to almost anything that offered employment, at one time doing odd jobs, at another unloading steamboats at the landing, at another cutting wood and at another crying goods at auction. He was quick-witted, good-natured, fond of company, ready and glib of tongue and had persuasive powers; while at the same time he was rather low in his tastes, unrefined in his conversation and slovenly in his dress. These qualities and a remarkable degree of energy, pliancy and ability to seize advantage of circumstances fitted him to take up the trade of politics and were of great avail in the rough surroundings of the early mining times; and he almost from his start in California put himself upon that path and with considerable success pursued it for the remainder of his life.

At the first election under the constitution in 1849, he became a candidate for the assembly from the Sacramento district; but the returns showed him to have been beaten by W. B. Dickenson. When the legislature met, however, he contested Dickenson's right to the office; and a special committee on contested elections with Edmund Randolph as chairman having reported in his favor, he was seated in Dickenson's place. On January 10, 1850, he was elected speaker pro tempore of the house by a

vote of seventeen as against two for Alexander P. Crittenden; and on February 6, 1850, upon the resignation of Thomas J. White as speaker, he was unanimously elected in his place. At the next election, in the autumn of 1850, he was returned to the assembly from Sacramento county and at the first meeting of that body on January 6, 1851, was again with practical unanimity chosen speaker. These votes showed that he was not only an excellent presiding officer, well versed in parliamentary rules and practice, but also a popular man and of course what was called a staunch Democrat. It was in the course of his service as such speaker that he joined forces with David C. Broderick and thereby formed a very strong political partnership, in which each was very helpful to the other; and it was in great part owing to this arrangement that, after the adjournment of the legislature of 1851, he was nominated to the office of governor and, as has been seen, elected, though by a very small majority and that subject to some dispute, over Pearson B. Reading.¹

On January 8, 1852, in presence of the two houses of the legislature which had declared him duly elected, after being sworn into office, Bigler delivered his inaugural address. After a few preliminary remarks, he said that no state could prosper so long as its counsels were governed by schemes of speculation and private aggrandizement and no community flourish under the influence of a wild, vacillating and unsettled policy. California had been, perhaps, more unfortunate in this respect than any of the other states of the Union. It should be his purpose, so far as the executive arm could reach the evil, to apply the remedy. It was better, he continued, to adhere to the principles and systems exemplified in the practice of the other states, which had been sustained by time and tested by experience, than follow after ideal and imaginary good. The highways, which had been successfully trodden in the other states, might be safely and prudently pursued by California. So long as American precedents were adopted and adhered to, there would be no need to blush on account of plagiarisms. He was a believer in the wisdom of the aphorism "that the fewer and plainer the laws by which a people are governed, the better." There was much

¹ Journals of Legislature, 1850, 581, 582, 647, 780; 1851, 778.

truth in the remark "that danger to popular government is to be apprehended from being governed too much." Few laws, well directed, would effect more good than numberless statutes, restraining, fettering and interfering with private enterprise. The greatest liberty consistent with good government was the true principle of republicanism and would contribute most to the development of the resources and energies of a people.

The country was rapidly advancing. But a short time had passed since the people were roving and unsettled and were "dwellers in tents;" the valleys were wild and unbroken by the plow, and even the cities were only places of temporary sojourn. Now the prospect was changed; the valleys began to teem with the rich products of agriculture; and on every side neat and comfortable dwellings, surrounded by well-cultivated farms, were to be met with. The greatest strength and wealth of a state consisted in its hardy yeomanry. He was in favor of the most liberal policy towards those who led the way in bringing into subjection the unsettled lands of the wilderness and would use every exertion to obtain an extension of the pre-emption and donation system over the state. The mechanical arts were also to be encouraged. But commerce was, in this country, of native growth and required no stimulus, save that of free trade and unrestricted competition. The mines, also, should be left as free as the air and no proposition to lease or sell them should for a moment be entertained. The inevitable tendency of such a policy would be to establish monopolies, which more than anything else would serve to paralyze the energies of the most enterprising and the enterprise of the most energetic class of men the world had ever seen. In diversified capabilities—commercial, agricultural, grazing, mining and manufacturing—California might challenge the world to present a parallel. Nowhere else were combined so many elements of greatness. But in working out the problem of national greatness, all the efforts of government could exercise only an auxiliary influence. The true components of greatness were in the people—in their economy, their industry, integrity, intelligence and prudence. And upon them, in the main, must reliance be placed. There was a passion for wealth and luxury abroad, than which nothing could be more

inimical to the purity and stability of republican government. The destructive tendency of those vices was one of the lessons of history. When a people become so enamored of gold as to gloss guilt and bid ignorance become clothed in the garb of wealth, then virtue and wisdom, the only true and stable pillars of the commonwealth, begin to totter and the reins of power to lapse into the hands of the inefficient and dishonest.

In conclusion—and it was the main point of all his remarks—he approached the slavery question. He said that those who opposed the spread of slavery were governed by a spirit of disaffection towards the Union and a disposition to interfere with the affairs and domestic institutions of other states. Those who indulged such dangerous sentiments entirely mistook the object of the confederation and the true duties of good citizens. It was not the part of the people, as politicians, to become the fanatical propagandists of mere moral tenets. The Union was formed for no such purpose, but for the mutual protection of each state in such form of republican government and such domestic regulations as each might choose to adopt. He hoped that California would always be found the earnest and unwavering friend and advocate of union, devoting its energies sedulously and exclusively to the modeling and development of its own domestic institutions and freely permitting to others the enjoyment of the same high privilege. The storm, brought about by the opponents of slavery, which had lately agitated the country and well-nigh razed to its foundations the most glorious of civil governments, had not yet ceased to howl. As for the people of California, devoted as they were to the national institutions, it was scarcely necessary to affirm that they were in full accord with and warmly approved the compromise measures, which had been adopted by congress for the purpose of preserving the peace and integrity of the Union. As for himself, the first executive chosen by the people of the state since its admission into the Union, he was pledged to exercise all the power vested in him to enforce obedience to the requirements of those measures; and it was a duty which he cheerfully assumed and would promptly discharge.¹

Lieutenant-governor Purdy, when inducted on the same day

¹Senate Journal, 1852, 28-31.

into his seat as president of the senate, also made an address, which was, however, short and modest. He said that it was with diffidence and apprehension that he assumed the office to which he had been called by the sovereign will of the people. He was sensible of his want of experience in legislation and especially in presiding over a parliamentary body; but he would expect a full share of the indulgence usually extended to the presiding officer of a deliberative assembly and look with confidence to the experience and courtesy of senators for guidance and support. There was, he went on to say, a wide field presented and, in view of the magnificent future of the rising and promising state—advancing as it was by giant strides to destinies far beyond the reach of mortal eye—a powerful motive for the exercise of the purest and loftiest patriotism and most laudable ambition. No people on earth ever had greater reason to be proud of their country or were under a greater debt of gratitude to Providence for the abundance of blessings and means of happiness than the Californians. There was only one thing more necessary to make a truly happy and prosperous people, and that was a wise and economical government, which should provide judicious and wholesome laws, secure to honest and useful industry its legitimate reward, and relieve the public, as far as possible, from the oppressive burdens of taxation. It was the duty of the senate to set the example of economy; and he hoped it would at once address itself to the business before it and close the session at as early a day as practicable.¹

But notwithstanding the meeting and organization of the legislature at Vallejo, it was evident from the first that there were no conveniences for its continuance and that it could not remain there. Mariano G. Vallejo had pledged himself, as has been seen, to furnish suitable buildings and rooms, to be ready by June 1, 1851; but his pledge was as unreliable as his pretended ownership of lands in that neighborhood and his pretended fortune of a million of dollars over and above liabilities. Under the circumstances, it being apparent that it was useless to attempt to remain and do business at Vallejo, the assembly on January 9, the day after the inauguration, by a vote of thirty-one ayes to

¹Senate Journal, 1852, 31, 32.

twenty-six noes, adopted a joint resolution that the legislature should adjourn to meet at the city of Sacramento on Tuesday, January 13, 1852. This resolution was at once transmitted to the senate; but that body adjourned for the day without acting on it. The next day the assembly adopted another joint resolution to the effect that whereas the archives of the state were at San José, the treasurer should be required to suspend any further payments out of the general fund until the archives were brought to the place where the legislature was in session. This resolution, being transmitted to the senate, was at once concurred in. Upon this action Estell presented in the senate a petition of thirty-one inhabitants of Vallejo, praying the legislature not to adjourn to any other place and asking for one week to prepare suitable accommodations. But after some discussion this was laid upon the table; and the joint resolution for adjournment to Sacramento was called up. Estell moved to amend by a substitute that the houses should take a recess for ten days, which was lost by a vote of ten for to fourteen against it. The vote on the original resolution to adjourn to Sacramento, which was then put, resulted in a tie, whereupon Purdy, the lieutenant-governor, threw an adverse casting vote and defeated it.¹

Immediately or very soon after its adoption of the resolution in reference to the suspension of payments from the general fund, the assembly by a vote of forty ayes to eight noes adopted a concurrent resolution declaring Vallejo the legal and permanent seat of government. When this was transmitted to the senate the vote, by which the joint resolution to adjourn to Sacramento had been lost in that body, was reconsidered. Motions were made to substitute Monterey, San José and Benicia respectively instead of Sacramento; but all were lost; when, on motion of Broderick, January 16 was inserted instead of January 13 and the resolution, as amended, was adopted by a vote of thirteen ayes to ten noes; and immediately afterwards, on motion of the same, the assembly resolution declaring Vallejo the legal and permanent seat of government was concurred in. The next move was a resolution of the senate requiring the superintendent of public buildings to deliver to the authorities of Sacramento

¹ Assembly Journal, 1852, 37, 38; Senate Journal, 1852, 36-38.

such furniture as might be required there for the legislature, which together with the amendment to the former resolution being concurred in by the assembly, the legislature adjourned in accordance with them, to meet at Sacramento on Friday, January 16, 1852.¹ ♦

At Sacramento, when the houses convened there pursuant to adjournment, they adopted a joint resolution authorizing the governor to remove the archives to, and requiring the state officers to reside at, Sacramento during the session; and they then adjourned for several days. On January 24 a resolution, which had been adopted by the assembly for a committee of three from each house to confer with Mariano G. Vallejo in regard to removing the seat of government from the town of Vallejo was concurred in by the senate; and two days afterwards Vallejo addressed to the committee appointed under this resolution a remarkable communication, asking that the bond which he had given for the performance of his contract should be canceled and annulled. He said that many difficulties had interfered to embarrass him in the execution of the obligations imposed upon him by the act of February 4, 1851. He had formed an association with some of the most enterprising citizens of the state to develop the resources dedicated by him for the fulfilment of his obligations. That association, however, after much fruitless effort, had gradually ceased to have any practical life or vigor; and he had therefore himself proceeded to provide a temporary state house and offices to be in readiness for the meeting of the legislature at the beginning of the month. Having done so, he submitted that his obligations had been fully and faithfully performed; but, owing to circumstances over which he had no control and arising directly or indirectly from the action of the executive and legislative departments of the government, the credit and resources dedicated by him to the further prosecution of the enterprise and fulfilment of the obligations imposed upon him by his bond had been shattered and destroyed.² In other words, the communication was a virtual declaration by Vallejo that his speculation to make the capital was a failure and that he wanted to be released

¹ Assembly Journal, 1852, 42, 43; Senate Journal, 1852, 39-43.

² Annals of San Francisco, 394-396.

from his bargain. But the legislature, being fixed for the time at Sacramento, paid no further attention to the subject during the session; and it was not until the next session, when it met again at Vallejo, that the capital was finally and for good removed from that place.

The first important subject, which came up in the legislature after it met at Sacramento was the election of a United States senator in place of John C. Fremont, whose term had expired on March 3, 1851. The reason of this was that when Fremont and Gwin were admitted to their seats in the United States senate on September 10, 1850, the day after the admission of the state, they were required, in accordance with the federal constitution and laws, to draw lots as to their respective terms. Three ballots were prepared and put into a box—the first for a term ending with the thirty-first congress on March 3, 1851; the second for a term ending March 3, 1853, and the third for one ending March 3, 1855—and on the drawing Fremont drew the first and Gwin the third. On this account Fremont enjoyed his office less than six months.¹ An attempt had been made in the legislature of 1851 to fill the vacancy, but without a choice. The candidates on that occasion, besides Fremont, were Solomon Heydenfeldt, Thomas Butler King, John W. Geary, John B. Weller and James A. Collier. At the end of the one hundred and forty-second ballot, which stood twenty for King, eighteen for Weller, nine for Fremont and one for Geary—Heydenfeldt and Collier having been withdrawn—it being then apparent that no choice could be made, the senatorial convention adjourned.² On January 28, 1852, in accordance with concurrent resolution of both houses, a new convention met. The whole number of votes in 1851 had been forty-nine; in this convention it was eighty-nine. On this occasion David C. Broderick, who had been nominated by James M. Estell, made his first appearance as a candidate for the United States senate and was the chief opponent of John B. Weller, the only one of the previous candidates who had any strength. But on January 30, an agreement having apparently been arrived at between the two, Weller was elected for a term

¹ Congressional Globe, 31 Con. 1 Sess., P. 2, 1792.

² Journals of Legislature, 1851, 155-274.

of six years from March 4, 1851, by seventy votes over seventeen, which were thrown for Pearson B. Reading.¹

Among other interesting matters which came before the legislature of 1852 was a bill, introduced into the senate by James H. Ralston, to distrain for rent and to sell the property distrained. But this English method of enforcing the contract of lease did not suit the genius of the people; and the bill was indefinitely postponed.² Philip A. Roach introduced into the senate a bill to authorize married women to transact business as sole traders, which became a law.³ A bill to suppress gambling came before the senate and resulted in a tie vote of thirteen to thirteen, when Purdy with his casting vote rejected it and left licensed gaming to go on for a few years more.⁴ A bill to authorize the common council of San Francisco to purchase or erect a city hall was introduced into the assembly by Herman Wohler and passed that body. In the senate it was referred to a committee consisting of Broderick, Snyder and Soulé; and a few days afterwards it passed the senate and became a law.⁵ This statute, and the proposed purchase of the Jenny Lind theater by the common council under its provisions, gave rise to the greatest degree of indignation among the citizens of San Francisco; and they denounced the purchase and everybody connected with it in unmeasured terms of condemnation. It was called, as has already been shown, the "Jenny Lind Swindle," and Broderick especially was charged with corruption and fraud in connection with it. But, notwithstanding the imprecations of the better classes of citizens and denunciations of the better part of the press, the so-called swindle was consummated; and the common council of the time, instead of being any longer known as "city fathers," acquired the name of "city step-fathers."⁶

On January 24, 1852, Henry A. Crabb introduced into the assembly a bill respecting fugitives from labor and slaves brought into the state prior to its admission. It was no better and no

¹ Senate Journal, 1852, 62-70, 81, 82.

² Senate Journal, 1852, 395.

³ Senate Journal, 1852, 195; Stats. 1852, 101.

⁴ Senate Journal, 1852, 210, 211.

⁵ Assembly Journal, 1852, 441; Senate Journal, 1852, 232; Stats. 1852, 201.

⁶ Annals of San Francisco, 395, 396.

worse than other fugitive slave laws in other states. It passed the assembly on February 5 by a vote of forty-two ayes to eleven noes. On April 5, Broderick called it up in the senate and offered various amendments, which showed that he was taking his departure from, or at least was not harmonizing with, the slave power. Two days afterwards Ralston moved a substitute excluding blacks and mulattoes from the state and not permitting them to hold property or sue. This was lost by nineteen noes to four ayes, consisting of Ralston, Martin E. Cooke, Charles F. Lott and Royal T. Sprague. On April 8 the fugitive slave bill passed the senate by fourteen ayes to nine noes, among whom were Broderick and the four last above named; and on April 15, 1852, it received the governor's signature and became a law.¹ Meanwhile Archibald C. Peachy presented in the assembly a memorial from citizens of South Carolina and Florida in reference to their removing to this state and bringing their "property" with them. On the other hand Patrick Cannay offered a petition in the assembly from free negroes of San Francisco, praying such a change in the laws as would enable them to give testimony against white men. But such was the prejudice then existing against negroes that when Richard P. Hammond offered a resolution that the house should decline to receive or entertain any petition upon such a subject from such a source, it was adopted by a vote of forty-seven ayes to a single no, which was that of Augustus F. Hinchman.²

Next in violence for race prejudice to the anti-negro feeling was the anti-Chinese movement, which commenced about this time. A few Chinese immigrants, who may be called the pioneers of that people as settlers or sojourners in California, had come in the early part of 1848. A few more followed in the course of the year. In 1849, according to custom-house statistics, about three hundred and twenty-five came and in 1850 about four hundred and fifty. They were treated with distinguished consideration. On August 29, 1850, in San Francisco, on the occasion of funeral services commemorative of the death

¹ Assembly Journal, 1852, 95, 146, 147; Senate Journal, 1852, 257-285.

² Assembly Journal, 1852, 159, 160, 395, 396.

of President Taylor, in which all the citizens led by John B. Weller as grand marshal participated, the Chinese were invited to join and were assigned a prominent position in the procession. On October 29, 1850, at the celebration in San Francisco of the admission of California into the union, the Chinese again turned out in large numbers and formed a striking feature in the ceremonies of the day. Their welcome and the opportunities afforded in California to make money encouraged others to come. In 1851 the immigration of Chinese was about twenty-seven hundred and among them were a few dissolute women, the forerunners of a numerous and bad following. One of these women, usually known as Miss Atoy, was infamous throughout the country for her attractions and her conquests.¹

It was the practice of the Chinese then as now to huddle together in special and confined quarters and to dress and live as they had dressed and lived in China. Almost all their clothing and most all their food, which consisted in great part of rice, were imported from their native land. As a class they were harmless, peaceful and exceedingly industrious; but, as they were remarkably economical and spent little or none of their earnings except for the necessities of life and this chiefly to merchants of their own nationality, they soon began to provoke the prejudice and ill-will of those who could not see any value in their labor to the country. Nearly all the very early Chinese immigrants came to the country under a system of contract, by which their passage was paid and they were to labor for a stated term at certain rates of wages, high for China but very low for California; and the business of hiring them out and administering their affairs in general was in the hands of associations, organized in accordance with Chinese laws and usually known as Chinese companies, to which they were said to belong and owe faith and fealty. As the number of immigrants increased the number of companies increased also, until there were six chief large associations of this kind, commonly called "The Six Chinese Companies," which were entirely separate and distinct from one another but, having like interests,

¹Fourgeand's Prospects of California, California Star, April 1, 1848; Annals of San Francisco, 288, 294, 384.

usually agreed in their policy and worked together for similar objects. They were governed among themselves by their own laws and customs, among which were some very curious ones, such as their idolatry, their worship of ancestors and their obligation to send back to China the bones of those who might die in California; and they had various methods of enforcing their laws and customs without appealing to the American courts and tribunals—all of which tended to isolate and exclude them from the sympathy of their fellow-laborers.

They commenced to flock to the mines almost from the start. But at first they mined with very little success. It was remarked of them in 1849 that, instead of doing what the Americans called digging, they merely scratched; they were like women in the handling of tools; and as they from the beginning recognized the danger of in any manner interfering with the whites, they worked only claims that the whites had passed by or abandoned, and were satisfied with making a dollar or two a day.¹ But by degrees they learned better how to handle tools and in some instances, even in the very early mining times, undertook large and extensive works. An example of this was the working of what was known as Mississippi Bar near Slate Range on the Middle Fork of Yuba river. There were about one hundred and fifty Chinamen engaged and, for the purpose in imitation of the Americans of reaching the auriferous gravel, they constructed a wing-dam several hundred yards in length, built of pine logs, which excluded the water from half the bed of the river as far as it extended. They were said to have expended a vast amount of unnecessary labor and to have spent months in what whites would have accomplished in weeks. But they kept right on with their work and, although the returns to each man were not great, the yield altogether was very large.²

By degrees they began also to branch out into occupations which interfered or were supposed to interfere with the wages of white labor. They not only hired out as servants and laborers; but they became laundrymen and turned their attention successfully to various mechanical branches of industry, which would

¹ Borthwick's *Three Years in California*, 143.

² Borthwick's *Three Years in California*, 264, 265.

yield them wages, and in a number of ways picked up money, which would have otherwise gone into white hands. They established bars and restaurants in many of the mining towns. At one of these at Sonora, a Chinese woman, finely dressed in European style, sat behind the bar and served out drinks to the customers, while the Chinese proprietor entertained them with music from a drum resembling the top of a human skull covered with parchment and beaten with two small sticks, a guitar like a long stick with a little knob on the end of it, and a sort of fiddle with two strings. When asked whether the woman was his wife, he replied with apparent indignation, "Oh no; only hired woman—China woman; hired for show; that's all." Many others throughout the country were equally smart; and it was soon found that in one way and another they were gathering up large amounts of treasure.¹

Though the Chinamen had some vices, such as gambling and smoking opium, it was remarked that their money almost invariably went into the hands of other Chinamen and eventually found its way into the hands of one or other of the Six Companies and thence to China. They would buy some provisions, such as flour and fresh pork and a few other eatables which they could not get from China; but otherwise they did not patronize the butcher, the baker or the grocer. Almost the only articles of American dress they adopted were heavy boots; and, as they always wore them very loose like their blouses and other garments, it got to be said that a Chinaman always picked out the largest boots he could find for his money, without any reference to fit. It thus became apparent that the Chinese were not only foreigners and that the prejudices against foreigners applied to them as well as to others; but that they were foreigners who had little or nothing in common with other people, who in the aggregate collected much of the gold of the mining regions and sent it out of the country, and who were timorous, unwarlike and easily imposed upon. It did not take long under the circumstances for the miners, who were prejudiced against foreigners in general, to move against the Chinese. They claimed that individuals of a community ought to exist only by supplying the wants of others

¹ Borthwick's Three Years in California, 330, 331.

and that when a man neither did this, nor had any wants of his own but such as he provided for himself, he was of no use to his neighbor. But when, in addition to this, such a man also diminished the productiveness of the country he was a positive disadvantage and, in proportion to the amount of wealth he removed, was a public nuisance. What was true of an individual was also true of a class; and therefore, according to their views, the Chinese, though the best, faithfulest, most easily managed and most reliable of laborers and though all their labor and in various ways a large portion of their wealth remained in California, were very destructive and detrimental to the interests of the country.¹

The first expulsion of Chinese from the mines appears to have taken place at what was known as Chinese Camp in Tuolumne county in the autumn of 1849. There was said to be about sixty Chinamen working there at what was called "dry washing" under the tuition of a few Sonorans and in the employ of an English company. The party that expelled them, like the generality of persons engaged in that kind of business, were a lot of loafers, who destroyed the industry of the Chinamen but were too lazy and shiftless to replace it with any industry of their own. The spot, which paid well then and afterwards yielded immense returns, was for the time abandoned and did no one any good. A few other expulsions in other localities took place; but there was no general movement, as there had been against foreigners in general, for the reason probably that the Chinamen had not as yet come in such numbers as to cause apprehensions in the minds of any except a comparatively very few. Such was the state of affairs about the end of 1851; but in 1852 there commenced an unprecedentedly large immigration, far exceeding anything that had occurred before, and amounting before the end of that year, according to custom-house statistics, to upwards of eighteen thousand four hundred. The knowledge that this immigration was on its way or was about to get under way gave a sudden start to the anti-Chinese movement, which has long outlasted the movements against other foreigners as well as those against negroes.

It will be recollected that Governor McDougal at the begin-

¹ Borthwick's Three Years in California, 264.

ning of the session of the legislature of 1852 spoke of "a further immigration and settlement of the Chinese" as desirable, and had characterized them as "one of the most worthy classes of our newly adopted citizens." But in a very few days afterwards there was a very marked difference in the prevailing feeling. About the beginning of March, 1852, a bill was introduced into the senate by Tingley for the purpose of enforcing in the courts of the state the contracts and obligations made in China to perform work and labor in California. This bill was referred to a select committee, of which Tingley was chairman, and favorably reported on by the majority. But a week or two afterwards Philip A. Roach presented a minority report, which effectually killed it. Roach said that the object was to introduce the cheap labor of Asia. The bill provided for the enforcement of contracts made under it for a term not exceeding five years. The necessity for such a law was the allegation that "labor was too high;" and it was therefore proposed to import the surplus and inferior population of Asia and put it in competition with the labor of our own people. But the project, he insisted, would not work. It could not be made to pay; because, if that system were adopted, there would be no end of competition. Besides, that system would degrade labor. It was the influx of foreigners and the fact that they drew from the mines more wealth than our own people that led to the demand that foreigners should be taxed; and, as a concession to this demand, an unjust, unconstitutional and indiscriminating law had been passed to prohibit foreigners without a license from working mines belonging to the United States. Many of those foreigners had the right by treaty stipulations to work those mines as well as American citizens. The effect of that law had been to increase in no degree the productions of the American people, while it seriously injured commerce in the trading towns.

On the other hand, Roach contended, free mines and high-priced labor had conduced to bring to California thousands from every state in the Union and from those countries whose people had a right by treaty to equal privileges with American citizens. But with reference to the Chinese, he insisted, there was no obligation on our part to give them the freedom of the mines.

That a ruinous competition should not be forced upon the people of the state by bringing servile labor to contend against the interests of our working classes was evident enough without argument. If there were a necessity for cheap labor, it should be confined to such occupations as would not compete with citizens who live by the work of their hands. If Asiatic labor should be confined to the draining of swamp lands for the raising of rice, silk and tea or for raising sugar, cotton and tobacco, he had no objection to it; for those staples could not be cultivated without cheap labor; but from all other branches it should be excluded. He did not want to see Chinese or Kanaka carpenters, masons or blacksmiths brought here in swarms to compete with American mechanics whose labor was as dignified and honorable as the pursuits of the learned professions.

Again, he contended, the bill was not guarded enough. It provided that contract laborers were to be punished for refusing to fulfill their agreements. But they were, if arrested, to receive from the state as good rations and clothing as would be furnished them by their masters; and, in return, they were to be employed on the public works. Was it not clear, however, that the cost would be greater than the advantage gained? In no state had the earnings of criminals ever exceeded the expenses of conviction and support. Besides, under the bill, the artful rulers of the Chinese empire could easily send to California not only their paupers but their criminals likewise. Crime, he asserted, was prevalent in China. There were at the lowest estimate five hundred thousand criminals there, and this too under a system of punishment noted for its severity and certainty. A government as skillful in tact as that of China could not fail to perceive the advantage of permitting its criminals to emigrate. From the corrupt conduct of Chinese officials in the opium trade, it was to be expected that every malefactor in their prisons would be sent to California as a contract laborer. Criminals, it was true, had not already come in numbers, because the Chinese in California had been sent by contractors who held their families as hostages; but, if the system had so far worked well, it was probably only owing to the limited number sent.

But—he went on to say—the allowance of this immigration

and the commingling of races would expose our own people "to pestilences as foul as leprosy and the plague, which with the howlings of insanity would be likely to devastate the land." Instead of this, it was the policy of government to elevate the people; and to do so its labor would have to be protected and not degraded. Our government had protected the labor of its people by raising revenue from the productions of foreign labor and thus incidentally prevented a ruinous competition against its own people. The framers of the bill had sought to virtually reverse that policy and abrogate the system of incidental protection thus extended to labor. In so far as it could be claimed that the bill was designed to apply to European laborers, it would be plain that its object would be to place the labor of foreigners at the disposal of our own people in order that, if they earned money, it would be for the benefit of our own people. But he was opposed to any enactment that sought to place burdens upon any race of men who were under no other disabilities to become citizens except want of residence.¹

Such were the arguments adduced against the Chinese at the beginning of the movement against them. As to the bill in reference to contract labor, which called them out, it was on April 12 together with a substantially similar bill from the assembly, on motion of Van Buren, by a vote of eighteen ayes to two noes indefinitely postponed.² On the same day, and apparently with the idea of getting on record early, Paul K. Hubbs introduced into the senate a bill, which purported to have for its object to prevent coolie labor in the mines and involuntary servitude. This bill, as might have been expected from its extensive scope, was unable to keep its legs and broke down as a premature birth. But on April 23, Governor Bigler gave a renewed impetus to the anti-Chinese movement by the transmission to the legislature of a special message on the subject. He said that it was very important to adopt measures to check the tide of Chinese immigration. He alluded particularly to coolies, who were sent here, as he had been informed and as was generally believed, under contract to work in our mines and

¹ Senate Journal, 1852, 67, 68, 192, 217, 669-675.

² Senate Journal, 1852, 306, 307.

after a certain term to return to their native land. Could such creatures with safety, he asked, be admitted to the enjoyment of the right of citizens in the courts? If they were ignorant of the solemn character and indifferent to the solemn obligations of an oath to speak the truth—and he plainly assumed such to be the case—it would be unwise to receive them as jurors or permit them to testify, especially in cases affecting the rights of others. The naturalization laws, he continued, extended only to free white persons. They certainly excluded the black classes of Africa and probably the yellow or tawny races of Asia, as well as the copper-colored races of America. In many of the states Indians had been declared to be not citizens but distinct tribes living under the protection of government and incapable of ever becoming citizens. As for the Chinese, their cupidity alone had brought them to this country. None of them had come as an oppressed people; none of them had sought our shores as an asylum or to enjoy the blessings of a free government.

Asia, Bigler went on to say, contained an area of seventeen million eight hundred and sixty-five thousand English square miles and the total population was estimated at three hundred and seventy-five million two hundred and thirty thousand persons. The population of the Chinese empire and dependent states was one hundred and sixty-eight millions. The average rate of passage from China to California charged coolies was forty dollars. The emigration from Canton to California for 1852 was estimated at twenty thousand. They were given a free passage out and back with wages of from three to four dollars per month. The usual wages of coolies in China was one dollar per month and food enough to sustain life. Most of the coolies sent here were married and, while they were absent, from one dollar and a half to two dollars per month was paid to their families for subsistence and the amounts deducted from their wages. And their families were retained as hostages for the faithful performance of their contracts of labor. These contracts, Bigler insisted, were against good order and the solid interests of our society and ought not to be recognized or enforced within the limits of this state either upon the score of international comity or law. As the introduction of one hundred

thousand or any number of coolies, under such contracts with non-residents, might endanger the public tranquillity and injuriously affect the interests of the people, measures should be adopted to avert the evil. He therefore proposed such an exercise of the taxing power by the state as would check the immigration, and a demand by the state that congress should prohibit the coolies shipped to California under contracts from laboring in the mines.

He had examined the constitutional questions involved and believed that the state had a right to prevent the entry of any person or class of persons, whom it deemed dangerous or injurious to the interests or welfare of its citizens, and that the state had the exclusive right to determine in its sound discretion whether the danger did or did not exist, free from the control of the general government. There was no official information as to whether these contracts were voluntary or involuntary; but it seemed to him that it made no difference as to the power of the state to enact laws to prevent or discourage the immigration. Nor would such measures justify retaliation by Chinese upon Americans residing in that country. In all governments, as a general rule, foreigners were excluded from mines; and the Chinese could not complain if they were treated the same here as in other countries. The extraordinary wants of this state demanded novel, if not extraordinary, legislation. The history and condition of California were peculiar. They were without parallel. We could not be guided by precedents established in other states. And thus, he concluded, in committing this subject to the care and consideration of the legislature, he had performed one of the most important duties which could devolve upon him during his term of office. In response to this message, a special committee of five was appointed to consider the subject; and Van Buren, Ralston, Soulé, Estell and Jacob Frye were named as such committee; but, Van Buren declining to serve, John J. Warner was appointed in his place. This committee on April 28, 1852, presented a lengthy report, consisting chiefly of assertions, and at the same time introduced a bill purporting to protect mining interests and prevent excessive emigration from Asia to California. But the bill, like Hubbs' previous effort, never reached a third

reading; and the anti-Chinese immigration question, thus started, though it continued to afford cause for occasional rioting in the mines and in some of the towns, had a rest.¹

Bigler's attack upon the Chinese and Chinese immigration was considered by some of the most intelligent and liberal-minded classes of the community as very offensive and uncalled for. However objectionable the presence of the Chinese might be, it was not the place of the governor of the state to increase the prejudices and encourage the outrages that were being committed against them. There were therefore numerous answers to his message, and some of them by the Chinese themselves, in which it was supposed by many that they evinced a decided superiority to him, not only in temper but also in logic.² However this may have been, Bigler found that he had not done himself any very great amount of credit by his course; and at the next session of the legislature he had nothing to say on the subject. Nor is it likely, if he had had anything to say, that it would have met with any favor. There had in fact a kind of reaction commenced in favor of Chinese immigration. Several bills, one of which proposed that "no Asiatic or person of Asiatic descent nor Chileno should be permitted to work in any of the mines of this state," had been introduced into the assembly and by that body referred to its committee on mines and mining interests; and on March 9, 1853, a majority of that committee, consisting of James H. Gardner, T. T. Cabaniss, Benjamin B. Redding, R. G. Reading and Patrick Cannay, presented a report against any act preventing or discouraging Chinese immigration.³

On the same day the same committee presented a report on the Chinese population then in the state. They said it consisted of about twenty-two thousand persons, mostly from the Canton district. They had divided themselves into four departments, representing that district. Each department had a house in San Francisco, presided over by two men, known as heads of the houses, who were elected by the Chinese of the department in this state. There was besides this a committee elected by the

¹ Senate Journal, 1852, 373-378, 402, 731-737.

² Annals of San Francisco, 381.

³ Senate Journal, 1853, 233; Appendix, Doc. 28, 3-6.

Chinese merchants of San Francisco, which acted in conjunction with the heads of the houses. Each immigrant recorded his name and contributed ten dollars to a fund for the payment of salaries and other department expenses. The heads of the houses granted passports, and allowed no person to leave the country till his debts were settled. The houses were used as hotels for boarding those who desired to go there, and also as hospitals, where the sick were attended by their own physicians. The houses also advanced money to those who were poor and unable otherwise to go to the mines or attend to other business. The heads of the houses acted as judges; enforced the collection of debts, and punished petty offenses—the more serious ones being sent to the state courts. In case of disputes between the heads of the houses, the committee heard and decided them. When a vacancy occurred in the heads of the houses, the committee and heads of other houses filled it temporarily until the votes of all the members could be collected by messengers, either to confirm the appointment or elect somebody else.

The heads of the houses, continued the report, enjoyed entire confidence and exerted a controlling influence. These gentlemen, Gee Atai and Lee Chuen of the See Yup Company, which had ninety-five hundred members; Tong K. Achick and Lum Teen-Kwei, of the Yaong Wo Company, which had seventy-five hundred members; Tam Sam and Chun Aching of the Canton Company, which had four thousand members, and Wong Sing and Lee Yuk Nam of the Suwon Company, which had one thousand members, had all appeared before the committee and, through Tong K. Achick as interpreter, stated their grievances. They complained that their testimony was not received in controversies with Americans and that they were taxed without being protected. They said that some of their people had been brought here under contracts to labor for employers, but that the practice had been found unprofitable and had been abandoned. Most all had come as their own masters and with their own means. Some had borrowed money and pledged their property; some had agreed to give the proceeds of their labor for a certain time, and some had pledged their children to be owned as slaves in case of non-payment. They estimated the

Chinese capital employed in this state, other than that employed in mining, at two millions of dollars.¹

Cabaniss presented a separate report and went still further in favor of the Chinese. He said that one of the provisions of the proposed bills was to enable a white man to drive any Chinaman from his claim by ordering him off and paying for his improvements. It was also proposed to exclude Chilenos, forgetting that Chili was a republic and a model republic in comparison with many others of South America whose people were not to be excluded. It was absurd to make such a provision for Chilenos only, even if any exclusion were proper or just. He then reviewed the efforts of the maritime nations to secure the trade of the East Indies—how it was obtained first by the Portuguese, then by the Dutch and then by the English. The one that held it was the holder of the commercial and maritime dominion of the East and with it was connected the rise and fall of nations. Our position and circumstances now promised us the golden prize, for which nations had so long contended. If we wish to become the first commercial power in the world, were we taking proper steps to reach that point? He believed in allowing the Chinese to remain and treating them with justice. On the other hand, John J. Hoff and Benjamin F. Myres, a minority of the committee, reported against the Chinese and recommended that miners might be given authority to adopt rules and regulations excluding foreigners, who could not become citizens, from working the mines in their districts. They talked of the degradation of white labor, the swarming in of the leprous multitudes and their condition of slavery. They pointed to the free negro race in some of the northern states as an incubus—a canker spot in society that blighted all the elements of purity and health, and warned against creating the same blight in California.²

— At the next or 1854 session of the legislature, the first during Bigler's second term of office as governor, little or nothing more of a legislative character was done in reference to the Chinese than at the session of 1853. In the senate James W. Coffroth

¹ Assembly Journal, 1853, 233; Appendix, Doc. 28, 7-12.

² Assembly Journal, 1853, 233; Appendix, Doc. 28, 13-21.

presented a report of the committee on federal relations against Chinese immigration and said that at that time there were twenty-five thousand Asiatics in the state. On motion of Charles A. Tuttle, a futile resolution was adopted urging congress to allow California to impose a capitation tax on Asiatic immigrants to be paid by owners and masters of vessels before immigrants should be allowed to land. George W. Hook presented a report of the committee on vice and immorality to the effect that there had been a decrease of gambling, an increase of temperance, an increase of Sunday-school attendance and of refined society and an increase of anti-Chinese sentiment.¹ In the assembly H. B. Kellogg introduced a bill to prevent Asiatics from immigrating into or laboring in the state, and B. F. Myres a bill to prevent them from giving evidence in favor of or against any white person in a criminal case, both of which failed; and it was left for a later time and meaner legislature to place the last-mentioned disgraceful enactment upon the statute-book.²

But what Myres failed to accomplish for the anti-Chinese cause in the legislature, Hugh C. Murray brought about through the enginery of the supreme court. The infamous provisions of the statutes of 1850 excluding Indians and negroes or mulattoes from giving evidence in favor of or against a white person either in civil or criminal cases were still in active force. Several attempts had been made to repeal them. At the legislature of 1852, as has been seen, Patrick Cannay presented a petition for that purpose, which was almost unanimously rejected. At the legislature of 1853 W. Meredith renewed the fight by presenting in the assembly a memorial of colored persons praying for an amendment of the civil practice act so as to allow them to testify. George Carhart moved that the memorial should be rejected by throwing the same out of the window. Patrick Cannay, who occupied the chair at the time, ruled the motion out of order but said that he would entertain a motion to reject. Carhart appealed and the chair was sustained. J. P. McFarland moved to reject. A. G. McCandless moved as an amendment that the memorial be burned. The chair decided the amend-

¹ Senate Journal, 1854, 574-576, 600, 623, 624.

² Assembly Journal, 1854, 265, 496, 498.

ment out of order, whereupon Charles A. Leake appealed; but the chair was again sustained—this time by twenty-eight ayes to twenty-three noes. It was evident, however, from the temper of the house that the time for justice to the negroes had not yet arrived. The motion to reject was adopted by fifty-three ayes, no one voting in the negative; and on motion of Elcan Heydenfeldt the clerk was directed not to file the memorial among the papers of the house.¹

In the meanwhile a man, named George W. Hall, had been convicted of the crime of murder upon the testimony of Chinese witnesses. He appealed from the conviction to the supreme court. The matter came up for discussion in that tribunal in the autumn of 1854. Murray, who was chief justice, delivered the opinion, which was concurred in by Justice Solomon Heydenfeldt but dissented from by Justice Alexander Wells. Under the circumstances the decision had the force and effect of law, even stronger than if enacted directly by the legislature. Murray held that the word "Indian," as used in the statute concerning witnesses, included not only the North American Indians but the whole Mongolian race. He acknowledged that the word, as commonly used at the present day, was specific and not generic and referred only to North American Indians; but he claimed that, as in the days of Columbus all the countries washed by the Chinese waters were denominated the Indies, therefore all the Asiatics were Indians and inhibited by the statute from testifying against a white man. He attempted to bolster up this opinion by two very remarkable paragraphs, which indicate quite as well as any comment could the character of the decision. In the first place he said, "We have carefully considered all the consequences resulting from a different rule of construction and are satisfied that even in a doubtful case we would be impelled to this decision on grounds of public policy." And again, he said, "The anomalous spectacle of a distinct people—living in our community, recognizing no laws of this state except through necessity, bringing with them their prejudices and national feuds in which they indulge in open violation of law, whose mendacity is proverbial, a race of people whom nature has marked as

¹ Assembly Journal, 1854, 259-261.

inferior and who are incapable of progress or intellectual development beyond a certain point as their history has shown, differing in language, opinion, color and physical conformation, between whom and ourselves nature has placed an impassable difference—is now presented; and for them is claimed, not only the right to swear away the life of a citizen, but the further privilege of participating with us in administrating the affairs of the government.”¹

¹ People vs. Hall, 4 Cal. 399-405.

CHAPTER IV.

BIGLER (CONTINUED).

THE legislature of 1852, as has been seen, met at Vallejo and a few days afterwards, on account of the want of proper accommodations, moved to Sacramento, where it finished its session. But the law of February 4, 1851, for the permanent location of the seat of government at Vallejo, was still in force; and accordingly the next legislature, which convened on Monday, January 3, 1853, met at that place. By that time a few more buildings had been erected, though there were yet, properly speaking, no conveniences for the seat of government. The magnificent scheme of Mariano G. Vallejo to build a great city and his grand offers to donate to the state a hundred and fifty-six acres of land which he did not own, and three hundred and seventy thousand dollars which he did not have, had vanished into thin air. On January 7, 1853, four days after the commencement of the session, the assembly adopted a resolution for a joint committee of both houses to confer with Vallejo in reference to the capital; but the senate laid it on the table; and on January 12, on motion of Henry A. Crabb, a resolution was adopted by that body that Vallejo was the capital and that it would be bad policy and contrary to the interests of the state to adjourn the session to any other place. But on January 26, on motion of Royal T. Sprague, the senate adopted another resolution, requesting the governor to demand from Vallejo all the moneys due or to become due under his proposition to the state. This brought Vallejo again to the front and on January 27 he addressed a letter to the governor, which the next day was transmitted to the legislature. In this letter Vallejo said that in consequence of unforeseen embarrassments, resulting in a great degree from the repeated removal of the state archives from

Vallejo to other points, the resources upon which he mainly relied to discharge his obligations had been entirely destroyed and his enterprise brought into such discredit that he had been compelled to ask the discharge of himself and his sureties from liability upon their bond for five hundred thousand dollars, and praying that the bond might be canceled and annulled; and he begged on this occasion to renew the request.¹

On February 2, after much controversy in both houses, a bill to provide for the permanent location of the seat of government at Benicia passed the senate by a vote of sixteen ayes to eight noes. The bill went to the assembly the same day, together with a legal opinion of S. C. Hastings, the attorney-general, to the effect that, though under the constitution of 1849 it required a two-thirds vote to remove the capital from San José, any subsequent removal could be made by an act passed by a simple majority vote. On February 4 the bill passed the assembly by a vote of thirty-one ayes to twenty-three noes; and on the same day it received the approval of the governor and became a law. On the same day likewise the assembly adopted a concurrent resolution to adjourn to meet at Benicia on February 11, 1853, which was immediately concurred in by the senate; and the legislature thereupon adjourned accordingly.²

Benicia, as will be recollected, was the town on the north side of the Straits of Carquinez, which had been started in 1846 under the name of Francisca as the rival of Yerba Buena and which in 1847, when the name of Yerba Buena was changed to San Francisco, took the name of Benicia. It was still a small place, not much larger than Vallejo, and nearly if not quite as unfit, so far as accommodations and conveniences were concerned, for the seat of government. The reason it had been chosen was doubtless owing partly to its central location on the main traveled route between San Francisco and the interior, and partly to the influence of persons interested in it and its neighborhood, but chiefly as a sort of compromise between warring factions and widely conflicting interests, which could not agree upon the first

¹ Senate Journal, 1853, 35, 42, 78, 88.

² Senate Journal, 1853, 93, 96, 107, 109; Assembly Journal, 1853, 111, 112, 127.

choice of either. Be this as it may have been, when the houses were called in their new quarters at Benicia on Friday, February 11, 1853, there was no quorum present, nor was there on the next; but on the following Monday the senate got to work and on Tuesday the assembly; and in a few days thereafter legislative matters became as lively as ever. One of the first things to be taken up, or rather resumed, was the business with Vallejo. By a section of the act for the removal of the capital to Benicia, it had been provided that Vallejo should be released from the performance of his bond upon condition of his releasing any and all claims for relief and damages against the state founded upon or growing out of anything connected with the location or removal of the seat of government. On February 14, he executed the release required and a few days afterwards copies were transmitted to the houses. And with this action the trouble with Vallejo came substantially to an end.¹

Bigler's annual message to the legislature for 1853, which was presented upon the organization of the houses at Vallejo on January 5, after some preliminaries about the expansion of our commerce, the augmentation of our sources of wealth and our general progress in all the arts of peace, proceeded to say that the settlement of California, which was not the least among the achievements of mankind, had developed in the public mind a strong bias favorable to other peaceful acquisitions, and had proved that, while in accordance with the uniform policy of government we had ever been ready to welcome immigrant foreigners who could consistently with the constitution and laws of the United States become citizens by naturalization, we were at the same time disposed to make foreign soil itself, in proper cases, peacefully a portion of the republic. "Despotisms," he continued, "forcibly subdue and subject foreign territory in violation of the laws of nations, while it is the policy of our government to extend the 'area of freedom' only where it can be done consistently with the rights of others and by a due observance of the laws governing national intercourse." He next addressed himself to the steadily increasing liabilities of the state, which were seriously affecting its standing and credit and retarding its progress; and he insisted

¹ Senate Journal, 1853, 110, 115, 130; Assembly Journal, 1853, 133, 134, 158.

upon a change of financial policy and lessening of expenditures. With this object in view he recommended a number of changes in the state constitution. These were: first, providing for biennial instead of annual sessions of the legislature, and those sessions not to exceed ninety days; second, repealing the taking of a state census in 1855; third, devolving the duties of superintendent of public instruction on the secretary of state or county officers; fourth, striking out the provision that "in order to revise or amend an act or section, the act or section proposed to be amended must be re-enacted and re-published at length," though there was no such provision in the constitution and he had simply misconstrued the provision against revising an act or amending a section by reference to its title as McDougal had done before him; fifth, leaving the matter of the appointment or election of a state surveyor-general to the legislature, and sixth, changing the commencement of the fiscal year from July 1 to December 15 so that the legislature upon its meeting in January might know the then financial condition of the state. He also recommended that these amendments should be made by the legislature and vote of the people, thus avoiding the expense and agitation of calling a convention. He likewise recommended that the eleven judicial districts and district judges should be curtailed to eight; that only one district attorney should be elected in a district; that there should be a reduction of salaries of state officers, and that salaries should be paid in cash instead of scrip, which was thirty-three per cent below par. By these changes he estimated that a saving would be effected of five hundred and twelve thousand seven hundred dollars, of which one hundred and seventy-one thousand would be in biennial sessions, one hundred and ten thousand in reduction of pay and mileage of legislators, and forty-three thousand two hundred in limiting sessions to ninety days.¹

He then, among other suggestions, called attention to the resistance in San Francisco to the taxes imposed by an act of the last legislature on consigned goods and the fact that the grand jury there had ignored two hundred indictments for violation of the law; and he recommended stringent measures, both civil

¹Senate Journal, 1853, 10-19.

and criminal, to enforce compliance. He thought that controller's warrants should be received for all state dues; that the water front of San Francisco should be extended and leased for the benefit of the state treasury; that measures should be taken to secure escheated estates, and that taxes should be enforced against steamships though claimed to be taxed in other states where the owners resided. He recommended efforts to secure donations from congress of public lands in limited quantities to actual settlers and that steps should at once be taken and an economical plan of operations devised to effect the early reclamation of the swamp and overflowed lands of the state, which should also be donated to actual settlers in quantities not exceeding three hundred and twenty acres. He opposed the sale or leasing of the mineral lands; claimed that minerals in every grant of land by Spain or Mexico were reserved, and recommended that measures should be taken to secure appeals in all cases of confirmation of Spanish or Mexican grants containing minerals. He set forth that under an act for the creation of a state prison, which had been passed at the last session of the legislature, commissioners had selected San Quentin in Marin county and purchased twenty acres of ground and that the contract had been let to the lowest responsible bidder; but that the law was defective and should be revised. He spoke of the extent and rich promise of the school fund and demanded renewed efforts to press upon the attention of congress the desirability of a Pacific railroad.¹

On the same day as the reading of the message in the senate and on the next day in the assembly, a resolution was adopted for a committee of five to investigate the passage of the state prison bill, which had been referred to by the governor. James W. Coffroth was the mover and chairman of the senate committee and John J. Hoff of that of the assembly. The two committees by further resolution were joined and sat as one. They immediately began their investigation by taking testimony; and the result was very certain proof of scandalous corruption, though those tarred with it seem to have had the art to avoid positive exposure. The entire state prison business was then

¹Senate Journal, 1853, 19-25.

and continued to be for some years afterwards a sort of festering sore on the body politic. It will be recollected that McDougal stated in his message of January, 1851, that in accordance with a law of the previous session he had placed Mariano G. Vallejo and James M. Estell in charge of the state convicts. By an act of April 25, 1851, they were constituted lessees of the convicts, together with the prison grounds and buildings, for ten years. By their contract, which was perfected in September of that year, they undertook the guarding, safe-keeping and maintenance of all state convicts in consideration of their labor, without cost, trouble or expense to the state. Notice was thereupon given by the governor for all convicts to be delivered into the custody of John C. Hays, sheriff of San Francisco, who with John Caperton had taken a sub-lease of the contract.¹

On March 30, 1852, George McDougal, William McDaniel and Horace W. Carpentier, who had been appointed under the act of 1851 state prison inspectors to take general supervision of state prison affairs, reported that they had addressed frequent communications to the lessees and their superintendent for information, but that until within a few days they had received no reply. They said further that by the law the lessees were required to erect at Vallejo suitable temporary buildings or to locate in the vicinity secure prison ships, but that no buildings had been erected or started; that one prison brig had been located near Angel Island, in which thirty-five convicts were confined, but that the other convicts were kept by the sheriff of San Francisco in the San Francisco county jail. They then proceeded to say that by the third section of the act the state impliedly covenanted for the building of a permanent prison by the state; that the act was one "affording rare facilities for private advantage, contemplating heavy expenses on the part of the state and income to individuals," and that it ought to be amended so as to require the lessees to undertake the erection of a strong and permanent building or that the legislature should provide other ways and means for the building of a prison and securing of criminals. To provide a secure prison was clearly one of the first duties of the government, as there were many

¹ Senate Journal, 1852, 676, 677; 1853, 8, 46; Assembly Journal, 1853, 32.

criminals in the country who had been attracted by the gold from various penal colonies and other parts of the world. On January 10, sixty prisoners had been received by the lessees and confined, and several more had afterwards been brought in. Of this number twenty had effected their escape and only seven had been recaptured. Seventeen had escaped from Angel Island by overpowering their keepers either by force or persuasion. A few had been retaken; but the remainder were then prowling around the state, committing new crimes and endangering the lives of citizens.

By the sixteenth section of the act, they proceeded to say, the lessees were prohibited from offering a reward of more than twenty-five hundred dollars; but there was nothing to prevent them from offering as little as six and a quarter cents for the recapture and delivery of any number of escaped convicts. In the case mentioned, what was designated as "a liberal reward" had been offered; but the expression was altogether too vague and ambiguous to induce men to attempt to capture persons so desperate and remorseless in character as these felons were known to be. In this respect also the law ought therefore to be amended. It was chiefly to the uncertainty of punishment that many of the weighty evils of the administration of the criminal law were owing. The government and laws were distrusted as inadequate to afford protection. Crime had increased by virtue of the impunity with which it was known that it could be committed. The facts afforded a specious apology for those irresponsible organizations which had dared to usurp the functions of government and in the sacred name of law to trample upon the laws. On these accounts they suggested a judicious revision of the criminal statutes, a reduction of the number of purely arbitrary misdemeanors and a more careful proportioning of the penalty to the gravity of the offense. By these means, they believed, good order would be promoted and crime diminished. They also recommended the prohibition by stringent laws of the importation of foreign convicts or of those other persons, belonging to alien and servile races, who on account of color or other cause were excluded from participating in the privileges and rights of citizenship. And in conclusion,

with the apparent object of ending with a strong sentence, they declared that: "From the Pelasgian races in Greece to the free negroes of the United States and the peons of neighboring republics, the degraded races have always needed the jailer and executioner and been conspicuous for drunkenness, improvidence and crime."¹

Following upon this report came the act for the erection of a state prison referred to by the governor, which had been approved by him on May 1, 1852, about which there was so much scandal and in reference to which the joint committee above mentioned had been appointed. In their investigation it appeared very plainly that there was good ground for the rumors of corruption. A. C. Bradford, the secretary of the senate, had indorsed on the bill that it was reported from the state prison committee on April 24, 1852; but the journal furnished no evidence of such report; and there was therefore a discrepancy between the indorsement on the bill and the journal. As an explanation of this, Bradford testified that one of the manuscript sheets of the journal was missing; but upon examination the committee found that all the sheets of the journal were in regular form. Again, the testimony showed that an amendment limiting the cost of the state prison to one hundred thousand dollars had been adopted and further that the bill had passed upon the express understanding that there was such a limitation; but the bill on examination did not show such an amendment, nor did any erasure or blot on the paper indicate that any amendment had been surreptitiously or otherwise torn from it. The fact, however, seemed to be that the limitation clause had been surreptitiously removed and a clause substituted in its place directing the governor to examine the award and approve the completion of the contract—though there was no proof as to who did it. There had been some misrepresentations made in reference to the action of the governor under the act; but the committee believed that he had manifested a desire to comply strictly with the requirements of the face of the law. Under all the circumstances the committee was of opinion that the act as passed, which provided for an

¹ Senate Journal, 1852, 677-679.

expenditure of from eight hundred thousand to one million of dollars was of no efficacy or binding force, and that the contract to build the prison, awarded under it to Ferdinand Vassault with James M. Estell, Joseph Daniels and R. M. Allen as sureties, being for about a million dollars, was clearly void. It was also void in so far as it purported to authorize an expenditure of more than the constitutional limit of three hundred thousand dollars. The committee likewise found that competition had been prevented by the manner of advertising for bids, and in conclusion it recommended that Vassault's contract should be declared null. In substantial accordance with this report, a new bill for the erection of a state prison, repealing the old act and declaring null and void the Vassault contract, was passed and on May 11, 1853, received the governor's approval and became a law.¹

Another subject of great controversy and scandal at this session of the legislature was the proposed extension of the water front of San Francisco as urged by Bigler in his message. The scheme was to extend the city front into the bay six hundred feet beyond the line guaranteed by the beach-and-water lot act of 1851, upon the faith of which property owners had purchased their lots. To this proposition the common council and the citizens of San Francisco in general made the most strenuous opposition. On March 17 a special committee of the senate, to whom the matter had been referred, reported strongly against it on the grounds that the proposed extension was not only unnecessary but that it would amount to a robbery of vested rights; that it would necessitate an expensive change of grades, and that the state was not the owner of the land below low-water mark. But notwithstanding all remonstrances, Bigler persisted and on March 24 addressed a special message to the houses, urging the project, as he put it, so as to relieve the state's financial embarrassment. He claimed that the state had the title, under the decisions of the United States supreme court, to the shores of navigable waters below high-water mark—without saying anything about land below low-water mark—and concluded with a declaration that the state would

¹ Senate Journal, 1853, 319; Appendix, Doc. 52.

have to be relieved either by extending the water front of San Francisco and making sales of lots or by increased taxation, and that the latter alternative was not to be thought of if it were possible to avoid it.¹

A bill to extend the water front in accordance with Bigler's recommendations had been introduced into the assembly and passed by a majority of four. The circumstances of its passage and the excitement it produced in San Francisco have already been related in speaking of the early progress of the city. When the bill reached the senate it was chiefly engineered there by Paul K. Hubbs of Solano county and supported by him and other non-residents of San Francisco. They claimed that the water-front limits embraced by the line of 1851 were too narrow; that, on account of all the front being already sold and the enormous rents asked for leases, no man of moderate means could establish himself on it; that, besides, the depth of water on the line was too shallow for ocean vessels, and that therefore the line should be extended to deep water so as not only to afford berths for vessels but also to allow the ebb and flow of the tides in the channel to scour and keep them clean. On the other hand, it was charged that the project was not only useless but that it would be of incalculable injury to the harbor of San Francisco; that it was a scheme of Bigler and a number of his interior country friends to raise money and for that purpose to "cinch" San Francisco for the benefit of the country, which as a rule was always ready for projects of that kind, and that, so far as the land to be gained was concerned, it could only be of advantage to real-estate jobbers and speculators who had purchased it for a mere song at what were known as the Peter Smith sales on execution against the city. It was said that these men were lavish with their money and influence to get the measure through. Many of these persons were politicians by occupation, which fact did not render the reports any the less credible. As the controversy progressed, much feeling was evinced and many bitter charges made. At length, on April 26, when the matter came up for final disposition, Joseph C. McKibben moved its indefinite postponement. Upon roll-call, the vote stood evenly

¹ Senate Journal, 1853, 154, 155, 222-225, 254.

divided, thirteen ayes to thirteen noes, when Lieutenant-governor Purdy threw his famous casting vote in favor of indefinite postponement and effectually killed the scheme.¹

Among other matters of interest and importance, which came up for consideration before the same legislature of 1853 was a project for calling a miners' convention. The object seems to have been the formulation of some plan by which miners should be required to procure fee-simple titles to their mining ground, so that such ground might be taxed for the benefit of the state treasury. The subject having been referred in the assembly to a committee of one from each of the mining counties, that committee by its chairman, Benjamin B. Redding, made its report on March 19. It said that since the discovery of gold in California the federal government had thought proper to leave the mines free to the operations of American labor, regulated only by such laws under the constitution as the people might see fit to enact. The state, with the same confiding faith in the deep-rooted democratic tendencies of its people, had continued the same wise policy and confirmed the course pursued by the general government. The state had gone further and, even without knowing what laws the miners had adopted or would adopt, had declared by statute that the customs, usages and regulations of the miners should under the constitution and laws of the state, govern the decisions of the courts. This confidence in the people—unexampled in the history of the world—had not been betrayed; and California presented the example of a large majority of its people regulating their own internal affairs, involving the monthly return of millions of dollars, without restraint by legal enactment on the part of the state or of the general government.

The president of the United States in his message of December 2, 1851, had said that he had previously recommended the survey and sale of the mines in small parcels and under such restrictions as would guard against monopoly and speculation. But upon further information and in deference to the opinion of persons familiar with the subject he had changed that recommendation and advised that they should be permitted to remain a common field, open to the enterprise and industry of all citizens

¹ Senate Journal, 1853, 360, 420, 421.

until further experience should have developed the best policy to be ultimately adopted in regard to them. It was safer, in his opinion, to suffer existing inconveniences for a short period than by premature legislation to fasten on the country a system founded in error, which might place the whole subject beyond the future control of congress. When, in addition to these views of the president, it was considered that at the beginning of work in the mines a very large majority of the miners were entirely unacquainted with any system of extracting the gold, and that in the course of a very few years, the amount annually exported was over fifty millions of dollars, it would have to be conceded that the rules and regulations of miners, so far as they affected the obtaining of gold, had been as successful as could have been anticipated. The committee therefore, entertaining these views, was of opinion that the wishes of the people of the mining regions would be met by the enactment of a law which, without violating the fundamental principles of existing arrangements, should at the same time organize them into a more perfect system by regulating the time of enacting local mining rules, giving them greater force and efficiency and providing for their record and preservation. For these reasons, though it was willing that there should be a large increase of the revenue of the state by a tax upon gold-dust after it was taken out of the ground—which however could be effected by the revenue laws—the committee believed that the calling of the proposed convention was inexpedient and unnecessary. And with this the subject was dropped.¹

About the same time a novel question was presented in a special message of the governor in reference to the Peruvian bark *Eliza*. It appeared that the vessel referred to on January 5, 1851, while entering the harbor of San Francisco in charge of David B. Morgan, one of the board of pilots appointed under the laws of the state for San Francisco, was by his negligence or unskillfulness run on Tonquin shoal to the great loss and damage of vessel and cargo. In May, 1851, José Fernando Santiago of Lima filed in the United States district court a libel in admiralty against all the San Francisco pilots, six in number, as copartners;

¹Assembly Journal, 1853, 294; Appendix, No. 35.

and in July he obtained a judgment against them for twenty-four thousand dollars and upwards. An execution on this judgment was issued against the pilots; but they were apparently an impecunious set, and it was returned with an indorsement that no property was found on which to levy. Upon this, Juan Y. De Osma, chargé d'affaires of Peru at Washington, addressed Daniel Webster, then United States secretary of state, on the subject and asked reparation. He alleged that foreign vessels were obliged by the law of California to employ pilots; that the pilots appointed under the state law had made from foreign vessels and divided among themselves two hundred and seventy-one thousand dollars of profits within fifteen months, and that, if they nevertheless could not pay for losses and damages occasioned by their unskillfulness or carelessness, the state of California should do so, for the reason that it compelled the employment of such men. Webster thereupon addressed a communication to Bigler, inclosing Osma's letter, and intimating an opinion that, if Osma's representations were correct, the state should be considered responsible for such acts of negligence or ignorance on the part of the pilots as to which they themselves had not the means to make reparation, and recommending that provision should be made by the state therefor. Bigler in his message claimed that the state was not liable. He said that Osma had applied for reparation from the United States and it was for the United States to answer. He had assumed that as the board of pilots was established by authority of the state, foreign vessels were required to provide themselves with the pilots of such board and that the state was responsible for their conduct. But there was no good ground for such assumption. Foreign vessels were not obliged to employ pilots. It was true, if they did not, they were obliged to pay half pilotage; but this was simply a matter of state police and in fact only a port charge. The system was the same in all the principal commercial countries of the world, not excepting Peru, and involved no new principle; and long-established usage respecting marine insurance rendered it indispensable. And besides, it appeared from the papers presented that the legal remedies for satisfaction of the judgment had not been exhausted either against the property of the defendants or their bondsmen.

But Bigler went still further and maintained that the state was not responsible for the misconduct of a pilot for the reason that a pilot was not in any sense an officer of the state. A board of commissioners was created by the law of the state to license pilots; but no revenue was derived to the state from such licenses. The state was no more responsible for the conduct of a pilot than for that of any other person performing a public duty under a license or commission. Auctioneers and commission merchants, for instance, acted under statute regulations and even paid a revenue; but a citizen of Peru in dealing with them acted under the law of contract, and the state was not an insurer of their fidelity. So with the contract of pilotage. There was an option to make it or not. In case of refusal, the vessel simply subjected itself to an additional port charge of half pilotage. If the contract were made, it was an entirely private one. If the state were responsible on the grounds stated, the United States could not escape an equal responsibility, because they had adopted the pilotage laws either as a part of their revenue laws or as a part of the international usages of the world. And with this argument—the best perhaps that Bigler ever made—the matter seems to have been dropped as a public affair.¹

Another interesting question came up in the senate on a petition of Thomas Burdue, the person who had been arrested and prosecuted and in fact convicted under the state laws for the crimes of James Stuart, who was executed by the San Francisco vigilance committee in 1851. He claimed that the state ought to pay him four thousand dollars in re-imbursement of the expenses to which he had been put. But the judiciary committee took a different view of the subject and reported against the claim. They said that to establish such a precedent and follow it would more than exhaust the entire revenue of the state. Burdue might have been subjected to expense; but he had been protected, and "he should rejoice that the laws have afforded that protection to him when wrongfully accused, rather than seek remuneration for his expenses from the government whose justice has protected him from ignominious death." It can hardly be said that Burdue had much cause to rejoice in the

¹ Senate Journal, 1853, 201; Appendix, No. 38.

protection of laws that allowed him to be convicted of crimes of which he was entirely innocent or in the justice of a government that only by accident escaped the infamy of putting him, innocent as he was, to an ignominious death. But it of course would never do for the state to attempt to reimburse the expenses of every person prosecuted for crime and acquitted. The report, probably on account of its giving a wrong reason for a right judgment, was concurred in only by ten ayes as against seven noes. But that was the end of the claim.¹

Still another interesting matter was brought up in the assembly on a report concerning various expeditions, which had been sent out for the succor of overland immigrants under the authority of an act passed for that purpose and approved May 3, 1852. The act authorized the governor to ascertain the wants and necessities of immigrants and upon their arrival "within the limits of the state or within the neighborhood thereof," if in a suffering condition, to relieve them, provided the sum expended did not exceed twenty-five thousand dollars.² Bigler appears to have taken an exceedingly liberal view of his powers by appointing James W. Denver, state senator from Trinity county, James A. Raines and J. Bodley his agents and sending them out from Sacramento on June 25, 1852, long before any overland immigrants could arrive, with several large and heavily laden trains. One of these under Denver and Raines proceeded to Carson valley and thence to Humboldt river. A post was established at Humboldt Sink; another on Truckee and a third on Carson river. The expenditures amounted in all to upwards of thirty-two thousand five hundred dollars. By subsequent sale of mules and other property of the expeditions a little over six thousand dollars was realized. The excess of nearly fifteen hundred dollars was paid by Bigler; and it was an object of the report to recommend that it should be refunded by the state. One of the arguments used to effect this purpose was that the sale of the wagons and harness would have probably covered the deficiency; but that they had been burned in an accidental fire at Sacramento and destroyed.³

¹ Senate Journal, 1853, 68, 116, 194.

² Stats. 1852, 77.

³ Assembly Journal, 1853, 299; Appendix, No. 36.

In previous years there had been some suffering among the overland immigrants; and on several occasions relief expeditions had been hastily prepared and sent out that did much good. But these expeditions of 1852 were the first and last of their peculiar kind and were by some supposed to smack more of political jobbery than praiseworthy benevolence. It was claimed on the one side that three thousand persons were relieved; but on the other hand it was answered that there was no special suffering and no need of relief. Whatever the fact may have been, there was much fault found with Bigler's course; and among others Edward Gilbert, one of the first California congressmen, who was then editor-in-chief of the *Alta California* newspaper, made some very caustic remarks upon the subject. This provoked the wrath of Denver, not only as Bigler's personal friend but also as one of his agents; and he replied in a bitter card, reflecting upon Gilbert's character. Gilbert replied by sending Denver a dueling challenge. Denver accepted and named the rifle, in the use of which he was an expert, as the weapon to be used. The duel, which was the first fatal one between very prominent men in the state, took place at Oak Grove near Sacramento on the morning of August 2, 1852. The combatants were placed forty paces apart. At the first fire both missed; at the second Gilbert was shot through the body a short distance above the hips and in a few minutes died.¹ Gilbert was a popular man and his death much regretted; but he never was avenged by a prosecution against his slayer. On the other hand Bigler on February 19, 1853, rewarded Denver by appointing him secretary of state in place of William Van Voorhies, who had resigned.²

In the assembly of 1852 a resolution was offered by Joseph C. Tucker in favor of Louis Kossuth, the Hungarian agitator; but it was promptly tabled and not again taken up.³ In the assembly of 1853, a resolution of somewhat similar nature was offered by George H. Blake against Louis Napoleon. It deplored the downfall of republicanism and the triumph of monarchy in

¹ *Annals of San Francisco*, 397, 398.

² *Senate Journal*, 1853, 132.

³ *Assembly Journal*, 1852, 74.

France; disclaimed any sympathy whatever with the new emperor of the French, and declared him an enemy to France and republican institutions. But the assembly appeared to think the resolution beyond its province and refused to adopt it. Blake was more successful in a concurrent resolution introduced a few days afterwards condemning the action of federal and municipal officers in encouraging and countenancing Louis Napoleon by giving a banquet to Patrice Dillon, the French consul and representative of his government at San Francisco. This was adopted by a vote of thirty-five ayes to twenty noes; but in the senate it was indefinitely postponed by a vote of eleven ayes to ten noes.¹

Both in the legislature of 1852 and in that of 1853 the question of a division of the state came up and in the latter, for the time at least, was put at rest. Some of the land owners in the southern part of the country complained that they were obliged to pay much more than their just share of the taxes because the miners, who were much the largest portion of the population, paid comparatively nothing. They seemed not to understand that the miners were of immense benefit to them even if they were not taxed, and that under the circumstances it was impossible or at least impracticable to tax them. They insisted that they were outraged and held meetings with the avowed object of dividing the state and creating out of the southern part a new commonwealth or remitting it to the condition of a territory. It will be recollected that Governor McDougal in his message of January, 1852, in a blundering way calculated to cause trouble if attention had been paid to his remarks, had referred to the inequalities of taxation without giving the reasons, and recommended changes in those provisions of the constitution which required general laws to have a uniform operation and that taxation should be equal and uniform. Acting or pretending to act on this suggestion, the majority of a committee of thirteen at the head of which was Henry A. Crabb, to whom the subject was referred in the assembly of 1852, presented a report in decided favor of a convention and a revision of the constitution. On the other hand A. F. Hinchman and several others presented a minority report against a convention and intimated that the

¹ Assembly Journal, 1853, 115, 119; Senate Journal, 1853, 133, 134.

object was not so much to revise the constitution as to divide the state or some other ulterior purpose, not avowed. Subsequently at the same session a bill was introduced by R. N. Wood of San Francisco to divide the state; but it was immediately laid on the table, where it remained. In the senate of 1853, in which the whole subject was very fully discussed and considered, D. B. Kurtz offered a joint resolution for the division of the state into two or more states, but it was promptly on motion of Crabb, then a senator, laid on the table by a vote of fifteen ayes to eleven noes.¹

A great abuse of legislative discretion had gradually sprung up in the practice of granting leave of absence to public officers and particularly judges. The legislature of 1850 had given permission to S. C. Hastings, chief justice of the supreme court, to visit Oregon or Panama in the course of that year, provided the visit should be without detriment to his judicial duties, and later on it granted three months' leave of absence to Justice Henry A. Lyons and a similar leave, to take effect after Lyon's leave, to the other justice, Nathaniel Bennett.² In the legislature of 1851, leave of absence for four months was granted to Robert Hopkins, judge of the seventh judicial district, Charles Creaner, judge of the tenth, and Henry A. Tefft, judge of the second.³ The legislature of 1852 granted leave of absence to Thomas H. Caswell, county judge of Nevada county, for six months; to William Van Voorhies, secretary of state, for four months, to Justice Solomon Heydenfeldt of the supreme court for a period necessary for the complete restoration of his health, not exceeding six months; and to William R. Turner, judge of the eighth judicial district, for three months; but it also resolved that judges should not receive any salary for the time they were absent.⁴ In 1853 a majority of the judiciary committee of the senate reported in favor of a resolution allowing Hugh C. Murray, chief justice of the supreme court, a leave of absence for five months; while a minority reported against it and deprecated in strong terms the practice of allowing judges to visit the Atlantic states. The

¹ Assembly Journal, 1852, 166-174, 503, 504; Senate Journal, 1853, 150.

² Stats. 1850, 465, 469.

³ Stats. 1851, 527, 537.

⁴ Stats. 1852, 271, 273, 287.

resolution was barely adopted by twelve ayes to eleven noes. In the assembly it was at first indefinitely postponed by a vote of thirty-two ayes to sixteen noes; then reconsidered and finally adopted by thirty-four ayes to twenty-one noes; and the governor approved it, together with a similar resolution allowing four months' leave of absence to John C. Hays, sheriff of San Francisco county. A few days afterwards Delos Lake, judge of the fourth judicial district, asked four months' leave of absence. The senate at first refused but on reconsideration consented, as did likewise the assembly. John Conness thereupon struck the key-note, that evoked a response of deserved ridicule upon the whole business, by offering a resolution that the entire judicial department of the state should be granted an indefinite leave of absence. His resolution was of course laid on the table. But it accomplished its purpose. A few days afterwards Bigler vetoed the Lake resolution as contrary to the spirit of the constitution and dangerous to the rights and interests of the people. He attempted to explain the apparent inconsistency of having approved the Murray resolution a few days before by saying that the legislature had since then repealed an act to supply temporary vacancies caused by absence of judges, and that he proposed thenceforth to withhold his consent from any act allowing judges to absent themselves from the state.¹

Before dismissing from further consideration the legislature of 1853, two other subjects, which attracted attention and acquired more or less prominence at the time, may be mentioned. One was a message of the governor to the legislature transmitting a report of William Van Voorhies, the secretary of state, together with an abstract of the census returns of the state of California for the year 1852. From these it appeared that the population had increased for the preceding two years thirty per cent annually and that it was reasonably to be expected that in ten years the state would quadruple its population. Van Voorhies gave a general review of the condition and business of every county, except El Dorado, from which he had had no return. He said that the population at that time was two hundred and twenty-

¹ Senate Journal, 1853, 40-46, 139-142; Assembly Journal, 1853, 70-76, 143-146.

four thousand four hundred and thirty-five or, with forty thousand for El Dorado, about two hundred and sixty-four and a half thousand. Of these San Francisco had upwards of thirty-six thousand; Yuba twenty-two thousand; Nevada nearly as many; Calaveras upwards of twenty thousand, and Tuolumne nearly eighteen thousand. There were nearly one hundred and eleven thousand acres of land under cultivation; one hundred and eight quartz mills in operation; nearly sixty-five thousand horses, sixteen and a half thousand mules; upwards of one hundred and four thousand cows; three hundred and fifteen thousand beef cattle and twenty-nine thousand work oxen. There were produced in 1852 upwards of two million nine hundred and seventy-three and a half bushels of barley; nearly two hundred and seventy-two thousand of wheat; one hundred and a half thousand of oats; one million three hundred and ninety-three thousand of potatoes, and sixty-two and a half thousand of corn or maize. The capital invested in mining was nearly fourteen millions of dollars and in other pursuits upwards of forty-one millions.¹

The other matter which gave a special prominence to the legislature of 1853, was the farewell address of Isaac B. Wall, the speaker of the assembly. Upon being required on Thursday, May 19, 1853, to declare a final adjournment, he took occasion to intimate in very plain terms that there had been much scheming for private gain. He thought this was a very bad showing for "Democracy." He said that Democracy, which he defined as the principles of the majority of the assembly and of that pure and brilliant character that stood at the head of the party in the United States, was a something that was altogether respectable, a something that was honorable, a something that was noble and elevated, a something that demanded personal sacrifices, a something unselfish, a something truthful, universal and beneficent, a something which could not live without patriotism, or exist without love for one's fellow-man. And he pronounced him, who could tear it down to truckling selfishness or steal its name to accomplish some mere personal wish, as false to its teachings

¹Senate Journal, 1853, 79; Appendix, 14.

or an ignorant zealot who merely worshiped the statue of Democracy, while he forgot the deity it represented.¹

But whatever Wall's notions about Democracy, it was very far from being in the hands of its manipulators what he represented. On the contrary it was a mere branch of partisan politics, whose chief objects were spoils and political power as means of acquiring spoils. It had commenced its career in California with proscribing those who had opposed the Mexican war and in effect announcing that "no Whig should receive a Democratic vote for any office in the gift of the people." In reply to this the Whigs, in the same spirit, declared that "they would, under no political necessity, confer office on or vote for any one who was not an open, undisguised Whig." The two great parties, as indicated by the vote of the first general state election in September, 1851, were very nearly evenly divided—Bigler, the Democrat, barely beating Reading, the Whig, for governor. But the Democratic party included more politicians—more men who devoted their time and attention to politics or, in other words, put more and more effective work into the business—and the natural result was that it won. And so also of the presidential election of 1852, the first in California: it resulted in a victory for the Democrats. Notwithstanding the split in the party, brought about by Stephen A. Douglas of Illinois and his doctrine that the territories should be allowed to decide for themselves whether or not they would allow slavery within their borders and the consequent quarrels between different factions of the same family, the outcome was a vote of nearly forty thousand for Franklin Pierce to about thirty-five thousand for Winfield Scott, and the election of Milton S. Latham and James A. McDougall over Philip L. Edwards and George B. Tingley to congress.²

The Democratic state convention of 1853 convened at Benicia in June. It was substantially under the control of David C. Broderick, the leader of the Douglas wing of the party, who had developed into a politician of great ability and extraordinary strength. It was at his suggestion that the Democratic ticket of that year was nominated, with John Bigler again at the head,

¹ Assembly Journal, 1853, 686, 687.

² History of Political Conventions in California, by Winfield J. Davis, Sacramento, 1893, 3-24.

and a platform adopted made up of glittering generalities committing no one and meaning nothing. On the other hand the Whig convention of that year met at Sacramento in July and nominated William Waldo for governor. Its platform presented a very marked contrast to that of the Democrats. It charged the dominant party and administration with squandering the enormous sum of four and a half million dollars in three years, not for public buildings, public improvements or public works but to fatten and strengthen official cormorants and make their power for evil greater than before; with the neglect of public duty; the imposition of grievous taxation, and the creation of useless offices and sinecure salaries. But, notwithstanding the greater or less degree of truth there may have been in the Whig charges, the Democratic organization was too powerful to be shaken by mere declamation; and at the election on September 7 its candidates were again all elected. Bigler's vote was nearly thirty-nine thousand to a little over thirty-seven thousand five hundred for Waldo; but the other Democratic candidates and particularly Purdy got very large majorities, amounting to from six to twelve thousand.¹

¹ Davis' Political Convention, 24-29; Senate Journal, 1854, 62, 63.

CHAPTER V.

BIGLER (CONTINUED).

GOVERNOR BIGLER, like various other prominent men of his time, became a confirmed politician and, so far as possible, a continuous office-holder. He would willingly have aspired to the United States senate, had not the imperious will and superior force of Broderick, who was himself determined to have that office, kept him down. But, failing to reach a higher office, he was willing to accept a lower one. As governor he was not in Broderick's way; on the contrary he was useful to him; and he therefore received the nomination over again in preference to the more popular Purdy, who, as a native of New York, would have been very seriously in Broderick's way as he also hailed from that state. Bigler was not well thought of even by his own party; he ran far behind his ticket; but he still managed to pull through; or, if current rumor is to be believed, he was pulled through by the count, and thus became the only individual who up to the present time has ever filled the office of governor of the state for two terms.

The legislature of 1854 met at Benicia on Monday, January 2, and on the following Wednesday Bigler presented his second annual message, which was also in part a second inaugural. After thanking the people for his re-election, he pronounced the country in a healthy and prosperous condition. "The mineral wealth of our mountains," said he, "continues to be the admiration and wonder of the world; the product of our valleys, already the pride and boast of our own people, promises in a few short years, under the hand of careful culture, to more than equal the wants of California; our commerce, greatly expanded and diversified, has been much more than remunerative; in short, all the sources of wealth have been greatly augmented by the enter-

prise and well-directed efforts of our people." But immediately after giving this picture of roseate hue, he went on to sum up the state debt at considerably upwards of three millions of dollars and to state that the estimated expenses for the ensuing fiscal year would amount to about a million, while the estimated receipts under the best of circumstances would not reach eight hundred thousand. He then returned at once, as it were, to the scheme which seemed to have taken possession of him and straddled his neck like an old man of the sea—that is to say: the extension of the water front of San Francisco and the sale of the state's interest in the property to be taken in. "Every consideration of honor, patriotism and fidelity to our constituents," he urged, "imperiously calls upon us, at this time, to apply all the means legitimately at our disposal in payment of the existing state debts; and he added, probably to the surprise of most of his hearers, that the "project has now comparatively few opponents." He estimated that, with the extension and sale thus recommended and the sale of the reversionary interest of the state in the beach-and-water lot property of 1851, at least seven million of dollars could be realized—sufficient to pay off the entire debt and leave a balance in the treasury of three and a half millions, which properly invested in United States bonds would yield an annual interest of over two hundred thousand dollars that might be advantageously applied to public works at San Francisco and elsewhere. "And this," he went on to remark, in his fond vaticination, "in a few years would effect a mighty change in the condition of California."¹

Bigler had much more to say in his message about the condition of the state; about the civil fund; about the excessive revenue contributed in the way of customs by California to the national treasury; about the export of gold-dust in 1853, amounting to upwards of eighty-two millions of dollars; about the agricultural interests and the rights of squatters, whom he termed "that enterprising and useful portion of our people;" against the sale or lease of the mineral lands; against the policy of the general government in allowing the Indians to remain within the state; about the school fund, which he

¹ Senate Journal, 1854, 1-18.

estimated at nearly eleven and a half million dollars, and in favor of a Pacific railroad and regular oceanic steam communication with Asia and the Indies.¹ Somewhat later Bigler presented a special message expressing his opinion that the Leidesdorff estate, which was supposed to be worth a million and a half of dollars, had escheated and he recommended proceedings for its recovery.² But the main subject of his thought and solicitude continued to be the water-front extension scheme, which was not only to wipe out all the debt, into which three years of recklessness and extravagance had plunged the state, but also probably to furnish means for further prodigality. Finding that the project, on account of repeated and powerful remonstrances on the part of the citizens of San Francisco, did not look as promising as he had represented, he transmitted a special message on the subject and again persistently urged its adoption.³ But though an extension bill passed the assembly, it failed in the senate; and the governor was thus prevented from seeing the "mighty change in the condition of California" which he had predicted and which, had it been fulfilled, might possibly have astonished him as much as King Cræsus was amazed at the destruction of the great kingdom, predicted by the famous oracle of Delphi.⁴

The failure of the extension scheme and several other measures, which he had recommended, and the passage on the other hand of several appropriations which he did not favor, roused the governor's ire; and he took occasion at the end of the session of the legislature to express himself in a style very unusual with governors. When informed on Monday, May 15, 1854, that the legislature was ready to adjourn and asked whether he had any further communication to make, he answered that in response he could not refrain from expressing sincere regret that all the most important measures required by the people had been defeated either by a direct vote or by delay in acting upon them. "The bill providing for the extension of the water

¹ Senate Journal, 1854, 18-36.

² Senate Journal, 1854, 328, 329, 564.

³ Senate Journal, 1854, 526, 566, 604; Assembly Journal, 1854, 513, 563.

⁴ Assembly Journal, 1854, 468, 583.

front of the city of San Francisco," he proceeded to say, "passed the assembly but was defeated in the senate by an adjournment of that body, on Friday last, before it could be received and read a first time. This important measure, if it had received your sanction, would in a comparatively short period of time have secured the payment of the entire state debt and relieved the people from the burden of taxation, in which they have heretofore acquiesced patiently believing that the present legislature would provide for their relief by the appropriation of those ample means so entirely within their reach." In the same manner he complained that a bill providing for the selection of the remainder of the school, seminary and other public lands belonging to the state had met with determined opposition and been finally defeated. So also with a bill for the protection of squatters, which had passed the assembly but failed in the senate. He scolded the houses for not passing a bill to compel auctioneers to pay "state duties;" for failing to secure the Leidesdorff millions; for giving no attention to the necessity of amending corporation laws; for not carrying into effect his recommendations to amend the state constitution; for taking no action about the "civil fund" and the assumption by the general government of the war debt; for saying nothing against creating Indian reservations within the borders of California, and for doing nothing against Chinese immigration. And in conclusion, in addition to his other fault-finding, he reminded them that he had vetoed over five hundred thousand dollars of their thirteen hundred thousand dollars of appropriations.¹

But in the same proportion that Bigler lacked dignity and strength of character, David C. Broderick, the man who made him governor, possessed those qualities. This remarkable man, who was more the governor than the governor himself and one of the strongest men of the country, was born of Irish parentage in the District of Columbia on February 4, 1820. His father was a stone-cutter and worked on the massive marble columns, which support and adorn the eastern front of the capitol at Washington. While yet a child he was taken to New York city, where at the age of fourteen years he lost his father.

¹Senate Journal, 1854, 642-644; Assembly Journal, 1854, 643, 644.

About that time he bound himself out to learn the stone-cutting trade and served a full term of apprenticeship, at the same time assisting in part at least to support his mother and a younger brother. Being hardy, adventurous and enterprising he drifted into the New York volunteer fire department, then an exceedingly prominent organization, and soon became famous as one of the most fearless firemen on duty and one of the most courageous and effective fighters in the fisticuff conflicts which in those days frequently took place between the rival fire companies of the metropolis. Under the circumstances he naturally became foreman of his company, Howard No. 34, and began to take interest in politics, with which the whole organization was more or less intimately concerned. About the same time, and apparently with the object of widening his influence, he opened a drinking saloon that was called at one location "The Subterranean" and at another "The Republican" and became a sort of rendezvous for firemen and ward politicians, among whom were some very rough characters.¹

Broderick, though a saloon-keeper and under the necessity sometimes of taking a glass of liquor, was not an intemperate man. He never became intoxicated. He was reliable and, so far as his professions went, could always be depended on. His associations and situation made him a Democrat and a member of that faction of the Democratic party, which, on account of the use of loco-foco matches in a suddenly darkened room in Tammany Hall in 1840, was given the name of "Locofocos." His first prominent appearance in national politics was when President John Tyler had been repudiated by the Whigs and a movement was made to take him over into the Democratic camp, in which project Broderick occupied a front place. It was, perhaps, a low business; but one consequence was that Broderick obtained a lucrative position in the New York custom-house and became enabled to secure other appointments for chosen friends. Meanwhile he devoted much time to reading and study, generally following the instructions and recommendations as to his course of study of George Wilkes and Townsend R. Harris.²

¹ Broderick and Gwin, by James O'Meara, 1-5.

² O'Meara's Broderick and Gwin, 5-11.

In 1842 he lost his mother; and in 1844 his brother was killed by the bursting of a bomb-shell, which he and others were carelessly handling, supposing it to be uncharged. These events, which left him alone in the world, produced a depressing effect and rendered him even more serious than before. But by degrees he recovered his spirits and plunged into politics with renewed vigor. It became his mission, as he understood it, to fight against what was known as the aristocratic element of the Democratic party, represented by the so-called "Albany regency" in New York state and the "old men's general committee" of Tammany Hall in New York city. And he succeeded well in his efforts to push the young Democracy forward. In 1844, in his work for the election of James K. Polk as president of the United States and a Democratic mayor of New York city, he did efficient service which entitled him to recognition; but a year or two afterwards, in a candidacy of his own as a representative to the United States congress, though in a Democratic district, he was almost shamefully defeated. Not only the Whigs ran a popular opponent against him; but the aristocratic Democrats, for the purpose of rendering his chances as small as possible, put up a Democratic rival of their own faction. Broderick was enraged. Though he still held his place in the custom-house, he was disgusted; and he and his friends meditated vengeance. But the opportunity, for which he waited, did not speedily present itself. In the spring of 1849, when the gold fever broke out in the eastern states, he determined to make a way for himself in the newly developing world of California, where there were not the same aristocratic prejudices to be encountered; and as he shook the dust of New York from his feet he is said to have resolved and declared that he would never return to it until he could do so as a United States senator.¹

Broderick arrived at San Francisco by the Panama route on June 13, 1849. He was then in ill health and nearly penniless. Soon after his landing, at the suggestion of Colonel Jonathan D. Stevenson, whom he had known in New York and who loaned him a few thousand dollars, he in company with Frederick D. Kohler, also one of his New York friends and a worker in the

¹ O'Meara's Broderick and Gwin, 12-21.

precious metals by occupation, started the business of manufacturing private coins in the name of "Moffat & Co.," as has already been stated. The demand for these coins in the early days was so great that there was practically little or no limit to it; and no one stopped to inquire or cared much about their real value. Kohler did the assaying and Broderick the hard work. Their business was confined to five dollar and ten dollar pieces, worth however only four and eight dollars respectively. Of these they coined immense quantities from gold-dust purchased at fourteen dollars per ounce; and, as may well be imagined, their profits were enormous. Broderick's share was the foundation of a fortune, which by economy and judicious investments in San Francisco real estate became very large. In December, 1849, they sold out to Baldwin & Co., who continued the business; but by that time it had become much less remunerative than before.¹ Broderick in the meanwhile had apparently been too much engrossed with manual labor to pay much attention to politics. But on Christmas, 1849, the day after the first great fire in San Francisco, he and a few others took steps towards establishing a volunteer fire department on the model of that of New York; and he became the foreman of one of the first companies formed, afterwards known as Empire No. 1 and subsequently in his honor as Broderick No. 1.² His taking this active and prominent part in the fire department indicated that he was ready to enter into public political life again; and it was but a few days before an opportunity presented. Nathaniel Bennett, one of the two state senators representing San Francisco, almost immediately after the opening of the legislature in December, 1849, resigned his office, having been chosen a justice of the state supreme court. Broderick was nominated to succeed Bennett as senator; and at the election, which took place on January 8, 1850, he was elected, so far at least as the returns indicated, by an overwhelming majority. He took his seat as state senator on January 24, 1850; and from that time forward until his death in 1859 he was by far the ablest and most conspicuous figure in political life in the state.³

¹ O'Meara's Broderick and Gwin, 22, 23.

² Annals of San Francisco, 616, 619.

³ O'Meara's Broderick and Gwin, 23, 24.

At the second session of the legislature in January, 1851, when Burnett resigned the office of governor and McDougal succeeded to his place, Broderick was elected president of the senate and thereby became virtually lieutenant-governor. His knowledge of parliamentary law and his sedulous attention to official duties contributed to render him exceedingly effective as a presiding officer. But, though able and forcible, he had a hot temper, was imperious and sometimes violent. It was at the legislature of 1851 that the famous act giving the beach-and-water lots to San Francisco was passed; and it was mainly by purchases of portions of that property and their subsequent rise in value that Broderick became rich. There does not appear to have been anything wrong on his part about the passage of the bill or about his purchases; but he cast reflections upon the actions of various of his opponents in relation to the bill and other matters which roused his ire, and thereby involved himself within the next year or two in several personal collisions. His experience as a New York fireman was not calculated to make him averse to a fight; and, though that experience had been mainly confined to fisticuffs and not to deadly weapons, he did not hesitate to use fire-arms or cold steel if necessary. One of his earliest altercations in California, brought on in part at least by his violence, took place between him and James Frenan in a saloon at Sacramento, in which after some words Broderick caught Frenan by the beard, with the result that there was a clinch and a rough fight. Frenan appears to have got the better and dealt Broderick a blow with a tumbler, which cut an ugly gash upon his cheek and left a scar that marked his face for life. Another of his collisions, brought on in much the same way, was a duel with Caleb E. Smith, which was fought on March 17, 1852, in Alameda county and in which Broderick owed his life to the fact that Smith's ball struck Broderick's watch and was thereby prevented from inflicting a mortal wound.¹

After the adjournment of the legislature of 1851, Broderick gave his attention to electing the next one; and in so doing, so far as he was able, he took advantage of his knowledge of the New York and particularly the Tammany methods of manipulat-

¹O'Meara, 24-32.

ing ward politics and primary elections. He had never for a moment given up his determination to become United States senator. There were tremendous obstacles in his way and difficulties to be encountered. But he did not appear to care for anything that opposed the accomplishment of his purpose. And he did not want to lose any more time than was indispensably necessary. At the session of 1851, as has already been shown, there had been an ineffectual attempt to fill the place then occupied by John C. Fremont, who had drawn the short term and whose office was therefore to be vacated on March 3, 1851. Nearly one hundred and fifty ballots had been taken without any election. This failure evidently suited Broderick. It gave him an opportunity to do work for himself and at the election in the autumn he managed to have a number of his friends and supporters returned. In the legislature of 1852, when the matter of electing a successor to Fremont again came up, Broderick's name was presented as a candidate, and he received a respectable vote. But his organization of forces was not yet strong enough; and on the eighth ballot he was defeated by John B. Weller. After this failure, he made up his mind to fight for Gwin's place, which was to be vacated on March 3, 1855; and the struggle and fight he made for it, as will be seen, was the most remarkable in California and one of the most remarkable in the history of the United States.¹

Nothing in reference to the election of a successor to Gwin could be accomplished at the session of the legislature of 1853; nor was Broderick entirely prepared to begin the fight. But the favorable result of his labors in the autumn campaign of that year encouraged him to make an extraordinary effort at the session of 1854. By that time he had succeeded in attaching a number of subordinates to his fortunes. His personal magnetism was wonderful. He had also taught men to know that he would under any and all circumstances stick by his friends and that his good faith in this respect was a part of his character. In his campaigning work he had instructed active and aspiring men in every county how by helping him they would at the same time be most effectually promoting their own individual

¹ Senate Journal, 1852, 62-70, 81, 82; O'Meara, 24-29.

interests. And where these means failed, he did not scruple to employ other arts and aids by which he could secure supporters. No obstacle that could in any manner within his power be removed or surmounted was allowed to stand between himself and his object. He had the governor, several state officers and many legislators of prominence on his side; and, though still opposed by great odds, he thought proper to make a desperate attempt, in defiance of precedent and public opinion, to force his way then and there into Gwin's place. The scheme was said to be the invention of George Wilkes, who was then in California; but it hardly seems likely that Broderick, who was so much stronger and abler than Wilkes, needed his prompting.¹

The project was to bring on the election for United States senator one year before the proper time and at a legislature which had no right to elect. Gwin's term was not to expire until March 3, 1855; and the legislature to fill the vacancy would convene in January of that year. But Broderick and his friends put forward a plea that there might be delays and perhaps a dead lock in the legislature of 1855 and besides, that, on account of the great distance and the uncertainties of the means of transportation, the senator, if elected at that legislature, might not be able to reach Washington in time to take his seat. They also urged that, although it had been the invariable custom and unbroken precedent throughout the country to elect the senator at the legislature contemporary with or next preceding the vacancy, yet the constitution of the United States did not so prescribe, and there was no provision or law of any kind forbidding the contrary. And to set forth these views and obtain for them popular approval an elaborate address was prepared for publication. On the other hand it was plain that if the legislature of 1854 could elect a United States senator, who was not to take his seat until after the legislature of 1855 should convene, it could not only deprive that legislature from having a voice upon the subject, but it could elect senators indefinitely for any future terms. This was so obvious and the argument could be made so forcible and impressive that the opponents of the measure, with the intention of forestalling the proposed address, prepared

¹O'Meara, 30-46.

a counter address, giving their side of the question, and managed to have it published before the other appeared. Both addresses were signed by numbers of the legislators; and a very significant circumstance, indicative of the low depth to which the conflict was descending, was that the name of Charles A. Tuttle, a senator from Placer county, who had been elected as an anti-Broderick and anti-Bigler man, was signed first to the anti-Broderick address and two days afterwards to the Broderick document.¹

Tuttle's facing both ways, or rather his sudden change of position from facing one way to facing in the opposite direction, was not the only indication of the bad influences that were evidently underlying the contest. On Thursday, January 19, Elisha T. Peck, senator from Butte county, rose to a question of privilege and stated that on January 7, the day of the second inauguration of Governor Bigler, while a passenger on the steamboat Helen Hensley from San Francisco to Benicia, he had been introduced by A. A. Selover to Joseph C. Palmer of the San Francisco banking firm of Palmer, Cook & Co.; that on his return to San Francisco on the afternoon of the same day, while alone with Palmer, both being again passengers, Palmer had addressed him on the subject of the election and, on his stating that he was a Whig and opposed to it, Palmer had offered to "count him down five thousand dollars" if he would vote, and use his influence to induce his room-mate, William B. May, senator from Trinity county, to vote, for bringing on the election at that session and in favor of Broderick for United States senator; that he had replied in the most positive manner, "I will not sell my vote; I can not be bought," and that Palmer then said he did not consider his proposition an offer to buy and hoped Peck would not look upon it in that light, but he did not want anybody to work for him for nothing. Immediately after Peck's statement Tuttle rose and moved that, as several of the public journals within the previous few days had published articles about an attempt to bribe a senator, a special committee of five should be appointed to investigate the matter. If the motion had been successful, Tuttle would doubtless have been the chair-

¹O'Meara, 59-61.

man of the committee. But this was prevented by the adoption of a substitute, offered by Senator John S. Hager, that the senate as a body should investigate the charge of bribery made by Peck against Palmer.¹

Under the circumstances, however, little or nothing more was to be expected of the senate as constituted, than of a special committee with Tuttle at the head of it. The investigation was set for Tuesday, January 24. On that day Palmer appeared with Charles H. S. Williams, Stephen J. Field and Hall McAllister as his counsel, and Peck with Edward D. Baker. There were a number of witnesses; but the main ones were Peck on the one side and Palmer himself on the other. Palmer of course gave an entirely different version of the affair from that of Peck. He testified that the conversation on the boat commenced with Peck asking him who his choice for United States senator was; that he had answered, "I would like to see Mr. Broderick elected;" that Peck then said, "I am a New Yorker and I suppose I too would like to vote for Mr. Broderick; but I have had right bad luck; I have had a good deal of sickness in the country; I have paid fifteen hundred dollars doctors' bills and three thousand dollars would not make me whole in this electioneering campaign; I think it no more than right that I should get whole at any rate; don't you think so?" and that he had replied, "Mr. Peck, this is a matter which so far as I judge is not for me." Palmer further said that Peck then remarked, "Well, if I could get five thousand dollars I could pledge one vote—that is, Col. May's;" that he asked, "How could you pledge Col. May's vote, Mr. Peck?" that Peck rejoined, "We room together and we are going to vote together;" that he then said, "Mr. Peck, five thousand dollars is a good deal of money," and that no further conversation took place on the boat. Palmer added that on landing at Benicia, Peck had introduced May to him and that on the following Tuesday, January 10, Peck came to his office in San Francisco and asked to have a few moments' conversation; but that he had replied, "I am engaged, Mr. Peck, and can't see you;" and that that was all the conversation he had with him on the subject. Such was Palmer's story—in direct conflict with that of Peck;

¹Senate Journal, 1854, 101, 102.

and it was evident not only that both could not be true, but that one or the other was committing willful perjury. Even the testimony of the other witnesses was conflicting, altogether showing a very bad state of affairs.¹

After the hearing of all the testimony, counsel consumed several days in their arguments, Williams having by previous arrangement the opening and the closing. His argument was directed to the law and the facts as presented by the evidence and as such was brilliant. On the other hand Baker said little or nothing about the law and facts; he saw it was useless; but he launched forth into a powerful political philippic, which lasted for four hours and lacerated the defense deeply with its fierce and merciless invective. He depicted Broderick as a prowling lion, seeking whom he might devour; Selover as the subservient jackal, hunting prey for him, and Palmer's fond embrace as the golden clasp with the hidden sting of death to the honor of its encompassed victim. On February 3 a vote of the senate was taken and the result was ridiculously absurd. In the first place it was resolved, on motion of Gaven D. Hall, by a vote of twenty-one ayes to seven noes, that the statement made by Peck, alleging against Palmer an attempt to commit bribery, had not been sustained by the evidence; and in the second place it was resolved, on motion of Henry A. Crabb, by seventeen ayes to one no, that the decision was not intended in any degree to reflect upon the honor and dignity of Mr. Peck. The single dissenter, who voted against Peck's honor and dignity and thus preserved a show of consistency, was David Mahoney, who was entirely and thoroughly a Broderick man.²

The exposure made by Peck did not prevent the fight from going on or occasion any change in the manner of its conduct. Broderick was still determined to bring on the election because he knew that, if he could do so, he would be chosen United States senator and thereby accomplish the purpose of his life. Meanwhile, to succeed, strength had to be gathered from every side and everything else had to be subordinated to that one object. Among other influences that were brought to bear was the

¹ Senate Journal, 1854, 118, 119.

² Senate Journal, 1854, 154-159.

question of the permanent location of the state capital, which from the commencement of the government had been of absorbing interest. Broderick apparently cared little or nothing about the matter; but a number of his friends and supporters were very greatly in favor of Sacramento; and, as it turned out, the capital became located there as the price of Broderick votes. A bill for the purpose of removing to Sacramento had been introduced into the senate early in January; but it had been rejected by nineteen yeas to fourteen nays.¹ A like bill had been introduced into the assembly and a heated discussion followed, in which a quietus seemed to be put to the proposition by a consideration of the fact that the capital had already been removed seven different times since 1849 at a cost of nearly a hundred thousand dollars and that it would cost something like fifty thousand dollars to make another removal.² But as the election contest went on, a new bill to locate the capital at Sacramento was introduced into the senate and, after considerable strife, was finally passed and title approved on February 20. It was then rushed into the assembly, which was entirely devoted to Broderick, where it was passed on February 24; and the next day it was approved by Bigler. On the same day both houses adopted a concurrent resolution to adjourn to meet at Sacramento on March 1, 1854; and thus was accomplished one important purpose merely as a preliminary or stepping-stone to another and entirely different one.³

Broderick's fight, however, was not yet won. The removal of the capital did not accomplish what had been expected of it. When the houses met at Sacramento, it was only to renew the battle and much more desperately than before. It was well known that the assembly would pass the bill for bringing on the election whenever Broderick might direct it to do so; and therefore his opponents confined their efforts to beating him in the senate. An important vote on the bill was fixed for March 6. As the forces for and against it were nearly evenly divided, it was desirable that every senator should be in his place; and several

¹ Senate Journal, 1854, 85, 100.

² Assembly Journal, 1854, 91-96.

³ Senate Journal, 1854, 188, 220-249; O'Meara, 66, 67.

attempts were made at the last moment not only to buy a vote for the bill but also to keep one or two senators from voting against it. Peck for one had to be guarded against being kidnapped and kept away. But when the vote came on, every man was in his place. The assembly in the morning had passed the bill by a vote of forty-one to thirty-eight and then adjourned to witness the struggle in the senate. In that body great excitement prevailed, manifested by an ominous silence. The chamber was crowded. Broderick himself was present, wrought up to the highest state of tension. The vote was taken by roll-call, and each senator, as his name was called, answered as had been expected except Jacob Grewell of Santa Clara, who to the surprise of nearly everybody and to the consternation of the opponents of the bill, when his name was reached, voted for it. His vote, which if given the other way would have defeated Broderick, made a tie of seventeen to seventeen; and this was immediately resolved in favor of Broderick by the casting vote of Samuel Purdy, lieutenant-governor and president of the senate.¹

The Broderick men broke forth in a tumult of cheering and shouting. They rose and rushed from their places to congratulate one another and their chief, who had made the great fight. It was a time for triumph and exultation. No more business could be done that day; and the senate adjourned. But, as a matter of fact, the fight was not yet won. Grewell was essentially a weak man and could no more be depended on for one side than for the other. While the Broderick men had hold of him, he was for Broderick; but in the course of the night after the vote, the other side got hold of him; and when the opposition had hold of him, he was for the opposition. The latter induced him the next day to move a reconsideration, which was carried by a vote of eighteen to fifteen; and the same day the bill that had passed the assembly was rejected in the senate by a vote of seventeen to fourteen. The second day afterwards, as soon as the senate bill could be reached, the entire subject matter was indefinitely postponed by a vote of nineteen to twelve; and a motion to reconsider was defeated by a vote of nineteen to eleven. With these votes the project of forcing on the election

¹O'Meara, 67-73; Senate Journal, 1854, 260.

was ruined; and Broderick's hopes of seeing himself United States senator were, for the time at least, hopelessly crushed.¹

Though thus defeated in his attempt to bring on the election and take advantage of his admitted majority on joint ballot, Broderick did not by any means give up his contest for Gwin's place. He was not the kind of a man to give up while hope remained; and he was not one to believe there was no hope while life remained. His defeat only nerved him to stronger and more persistent effort. But in the meanwhile great changes were going on in national politics, creating new conditions and arraying parties in new combinations. The gradual loss by southern politicians of the preponderating power in the councils of the nation and their efforts to resist the inevitable fall of the so-called slaveocracy was rapidly precipitating the irrepressible conflict. Broderick, though born south of Mason and Dixon's line, was an anti-slavery man. Almost from the start of his career in California, he had manifested a deep-rooted antipathy to southern domination. In 1850 he had opposed a bill leveled against the immigration of free negroes;² and in 1852 he had voted against the fugitive slave law.³ He had denounced United States Senator Stephen A. Douglas and his truckling policy on the subject of slavery; and in 1854, when a resolution was introduced into the California legislature in favor of the Nebraska bill, in which Douglas indorsed squatter sovereignty, the fugitive slave law and the repeal of the Missouri compromise for the territories, though there were Democratic votes enough to adopt it, the out-and-out Broderick men voted against it.⁴

In effect Broderick was at that time of no party except his own. He still claimed to be a Democrat; but he was not a southern or chivalry Democrat, nor a Douglas or Nebraska-bill Democrat. He was simply an Anti-Lecompton or rather an Anti-southern-domination Democrat. He therefore, though with a strong personal following, stood substantially alone; but he was also backed by a powerful underlying, not yet developed but

¹ Senate Journal, 1854, 264-285; O'Meara, 73-81.

² Journals of Legislature, 1850, 347, 373.

³ Senate Journal, 1852, 285.

⁴ Senate Journal, 1854, 450, 451; Assembly Journal, 1854, 508; Stats. 1854, 274.

rapidly growing, anti-slavery sentiment, which in the end redeemed, ennobled and made a hero of him. As already intimated, his election scheme had hardly failed before he entered with redoubled energy upon the campaign for the next autumn; and he devoted all his time and effort to the election of delegates to the Democratic state convention, which had been fixed to meet at Sacramento on July 18, 1854. All this time, however, his enemies were not idle. They were no longer united as they had been during the struggle in the legislature; but they were numerous; and in many places they elected sets of delegates, in opposition to those elected by Broderick's friends, with the intention of making a fight in the convention itself as to which set should be entitled to seats. Meanwhile Broderick had managed by his mastery in the state convention of 1853 to become chairman of the Democratic state central committee; and as such it became his duty to make arrangements for the convention, call it to order and set its machinery in motion.

The Democratic state convention of 1854, on account of the circumstances under which it was held and what took place at it, was one of the most remarkable ever held. Broderick had hired the First Baptist church building on Fourth Street in Sacramento for its sessions; and he so arranged the seating of the various delegations as to have all his own friends in front next the large platform, upon which the officers were to be seated; while the seats of opposition delegates were more removed; and for some none at all were provided. In addition to this, the Broderick delegates were instructed to obtain access to the building by a rear entrance in advance of the hour for meeting, while the opposition would have to wait until the front doors should be unlocked and thrown open for general admission. As it happened, however, the anti-Broderick opposition, whom his tactics tended to unite, got wind of his plans and determined by a bold move on their own part to anticipate and defeat them. They accordingly joined and agreed upon ex-governor John McDougal as their candidate for president and upon a list of anti-Broderick delegates as committees on credentials and organization. To carry out their plans a body of thirty determined men, with their candidates in their midst, just before three

o'clock in the afternoon, the hour appointed for the meeting, made their way to the Baptist church and, before the Broderick arrangements could be completed, forced their way into the building and, in spite of Broderick's henchmen consisting of Billy Mulligan, James P. Casey and others of like character, advanced up in front of the platform. When Broderick, as was required by his position, called the convention to order, John O'Meara immediately jumped up and nominated McDougal as president. This was entirely unexpected to Broderick and for a moment he was confused; but in that moment Thomas L. Vermeule of Santa Clara, who had been chosen to nominate Edward McGowan on the Broderick side, made his motion. Broderick at once, inclining towards Vermeule, exclaimed, "I recognize the gentleman from Santa Clara. The seat of the other gentleman is contested and I will not recognize him." Upon this George W. Hook shouted, "You have no right to decide that. Your duty is to put the first motion made, and no matter who makes it. Broderick, however, paid no attention to Hook and proceeded to put the question on the nomination of McGowan. The consequence was great disorder, in the midst of which the motion of McDougal's candidacy was put and declared carried about the same time that Broderick announced the McGowan motion carried. At the announcements, both presidents rushed forward. On and about the platform there were many excited men, some with pistols in their hands which they were excitedly brandishing and all violently gesticulating, shouting and threatening to shoot. A friend of Broderick, who tried to intercept McDougal was shoved aside; and both presidents reached the platform at the same time.¹

There probably never was before or since in California a large political meeting in which there seemed more imminent danger of bloodshed. There were about six hundred persons present and among them not a few of the most desperate characters in the country. Everybody was wild with excitement; everybody was armed and numbers on the floor as well as on the platform had their pistols in their hands. It seemed as if a single spark would involve the whole in explosion. A blow or other sharp

¹O'Meara, 88-93.

provocation might perhaps have brought on a conflict, which could not well have eventuated otherwise than in general slaughter. And yet, notwithstanding the terrible tension and tragical suspense, there were at the same time elements of comic extravagance and ludicrous absurdity about the affair. The two presidents, upon reaching and mounting the platform, took seats side by side amidst a scene of great confusion and tumult. As soon as something like order was restored, McDougal announced the names of George W. Hook and John Bidwell as vice-presidents and was immediately followed by McGowan's announcing the names of John T. Hall and Amos T. Laird as vice-presidents. The two sets of vice-presidents advanced to the platform and seated themselves by the sides of their respective leaders; and again a scene of extreme confusion occurred. Two sets of secretaries and committees were next appointed and two sets of reports were made, each recommending that the officers chosen on its side should be declared permanently elected; and motions to adopt the reports were declared carried—one by each president. Every now and then there were angry speeches and menacing movements. Charges of bolting and treachery were heard on every side. Broderick charged McDougal with refusing to vote for Bigler, the regular nominee of the Democratic party at the election of 1853. A McDougal man answered by charging that Broderick's friend Vermeule had scratched Bigler's name at the same election. A Broderick man replied that John Bidwell had not voted for Bigler, and Bidwell rejoined that it was true he had not voted for Bigler; and he did it in a tone that indicated that he would not vote for him if he were put up again. Some attempts to compromise were made, which were ineffectual and only led to more noise and confusion; but the results demonstrated that there was a great deal more brag than fight in the double-barreled convention.

At one time in the course of the meeting, a pistol was discharged near the platform; and there was a general scramble, some of the delegates jumping from the windows. It was, however, soon found that the weapon belonged to A. R. Meloney and that it had gone off while he was nervously fumbling at it in his belt. The ball seems to have penetrated the floor; but

Meloney supposed it had mortally wounded himself. He described where it struck and declared that he could feel the warm blood running from the wound on the inside of his pantaloons into his boots. But when he was removed in a fainting condition and examined, it was found that his skin had not been abraded and that the supposed hurt was altogether the result of scare and overheated imagination. The incident and its outcome were indicative of and very well represented the whole business. They were simply an interlude in what proved a huge farce. Neither side accomplished anything. The two factions kept sitting and snarling at each other until dusk, when a couple of candles were lighted, one in front of each president; and the abuse and vituperation continued. Early in the evening the trustees of the church made their appearance and complained of the riotous proceedings and the damage that had been done to the building; but little or no attention was paid to them. About nine o'clock, however, a sort of compromise or armistice was agreed to, by the terms of which the two presidents were to lock arms and march together out of the building, followed by pairs of opposing vice-presidents and these by pairs of opposing delegates—the idea being that neither should have the advantage of the other. And thus they marched out and adjourned; and the church was then locked up and bolted against their return.¹

The next day the McDougal or chivalry faction met at Musical Hall and the McGowan or Broderick faction at Carpenter's Hall. The Broderick faction, for the purpose of winning a point, sent a communication to the other faction, asking for the appointment of a joint committee of conference with a view of composing and settling their differences; but the chivalry rejected the proposition and proceeded to nominate James W. Denver as the Democratic candidate for congress in the first district and Philip T. Herbert in the second district. On the other hand the Broderick convention renominated Milton S. Latham and James A. McDougall for congress and issued an address, in which they substantially charged the opposite faction with raising sectional issues and being schismatics and bolters. Each side contributed several hundred dollars to repair damages claimed to have been

¹ Davis' Political Conventions, 29, 30; O'Meara, 93-96.

done to the Baptist church the day before. But however much the Broderick faction claimed to represent the Democratic party pure and undefiled, it was very well understood that it was at bottom opposed to slavery or at least to southern domination, upon which the Democracy of that day was founded; and neither Latham nor McDougall, though both northern men, was willing to be understood as occupying any such position. When Latham returned a few weeks afterwards from Washington, he withdrew from the ticket and James Churchman of Nevada was nominated in his place. McDougall, though he did not formally withdraw, made no effort for election and was understood to be anti-Broderick. Meanwhile the Whig party met and nominated George W. Bowie and Calhoun Benham for congress. The election took place on September 6, 1854, and resulted in the choice of Denver and Herbert by nearly thirty-seven thousand votes over nearly thirty-five thousand for Bowie and Benham and ten thousand for Churchman and McDougall.¹

Broderick thus appeared to be completely beaten; and it was imagined by some, and particularly by the chivalry faction of the Democratic party, that he was politically ruined. But it was not so. It was far from being so. Though he had failed to gain the prestige of winning the congressional fight and at the same time of removing two rival candidates for the United States senatorship out of his way, he had succeeded in securing a sufficiently large number of members of the next legislature to prevent his enemies from gaining any points against him. And, as will be seen in the sequel, neither at that nor at the next subsequent legislature were his enemies able to overcome his opposition or elect any one of themselves to the coveted position, upon which he had set his heart and which he was still determined to win.

The legislature of 1855—and the one to which the election of a successor to United States Senator Gwin properly belonged—convened at Sacramento on January 1. Bigler on January 4, as soon as the houses were organized, presented his third annual message in which, as usual, he preached economy and the reduction of expenditures; and he again urged the extension of the San Francisco water front, though he now recommended

¹ Davis' Political Conventions, 30-38; O'Meara, 97-101.

that it should only be extended at special points, and only enough to pay off the state debt. He also took occasion to remark, in reference to the "civil fund," which he had hoped to get for California and about which he had expressed very positive views, that the supreme court of the United States had decided to the contrary or, in other words, to the effect that the state had no right to that fund; but, as if to get even with the federal government, he now advanced the doctrine that the state was, by virtue of its sovereignty, entitled to all the public land within its borders and that it had not by any means, by accepting the act of admission, agreed to the clause therein contained not to interfere with the primary disposition of the public lands. Not only thus but likewise by direct recommendation of more complete protection to actual settlers, he appealed, even more powerfully than before, to the squatter interest; and he again insisted on the importance of securing the two and a half millions of the Leidesdorff, Auguste Deck and other escheated estates. On the school question he was as usual diffuse; and, though the country was in reality on the eve of the great financial storm of 1855, the breaking of the banks, almost universal insolvency and general stagnation of business, he drew a flattering picture of the extraordinary prosperity not only of the mines but of agriculture and great advances in commerce and manufactures. On the other hand, though he had much to say on the importance of the Pacific railroad and advised that congress should be again and again memorialized in its favor, he had not enough words of reprobation for the fearful monopolies which might have the power to blight the prospects of advancing prosperity and paralyze the energies of industrious and enterprising men. And with the apparent desire of furnishing a first-class campaign document, full to the brim of the then dominant Democratic doctrine of states rights, he not only repeated his previous fulminations against Asiatic immigration, but he went much further and at considerable length argued the exclusive right of the state to exclude it, free from the control of the general government.¹

Very little attention, however, was paid to Bigler or his

¹Senate Journal, 1855, 24-54.

message. The absorbing subject of interest was the choice of Gwin's successor. Both houses of the legislature were largely Democratic; and, though a number of the members were Broderick men, it was perfectly well known before the session commenced that Gwin, as a candidate to succeed himself, had more than a majority of all the Democratic members, though not by considerable a majority of all the legislators taken together. The only possibility he had of winning was to induce the Democrats to go into caucus, because he was sure to become the caucus nominee; and, if he should become the caucus nominee, he was sure of re-election as his own successor. Broderick of course understood this perfectly well. He knew, as the result of what had taken place, that he himself could not be elected at this session and that his only chance to succeed Gwin was to stave off the election to some subsequent session at which he might be stronger. He therefore bent all his energies to this purpose and with this object in view determined to prevent a Democratic caucus. At the previous session it had been his interest to have a caucus and he and his friends had then insisted that a caucus was an eminently Democratic institution and could not be resisted by any one who desired to preserve his standing in the party. At that time his opponents took the contrary ground. But now the position of the two factions was reversed; the Gwin side insisting on a caucus and the Broderick side resisting and refusing. And in this fight, as might have been expected, Broderick won. He still declared that he and his friends represented the genuine Democracy and that the others were in reality bolters. He claimed that he had kept up the organization of the party and deserved well at its hands. He had been defeated; but he had accepted defeat and renewed the battle for the party with even greater energy and larger sacrifices than before.

It was with the most consummate skill that he took advantage of his opportunity. He not only played his own strength with commanding ability, but he made combinations with the other forces opposed to Gwin and with extraordinary adroitness kept them all out of caucus. He turned on Gwin with redoubled effectiveness the tactics by which he had himself been defeated the year before; and he in substance crushed him. The session

of the legislature was frittered away without any progress being made, and Gwin was weaker at the end than at the beginning. A whole month, commencing on January 17, was spent in vain efforts to elect. Fifty ballots were taken. It required fifty-six votes to elect. Gwin commenced with forty-two and ended with forty-one, never receiving over forty-three; Broderick had twelve; the other anti-Gwin Democratic vote amounted to an average of seventeen; and the Whig vote was thirty-six. On February 16, it being apparent that the time of the legislature was being wasted to no purpose, the joint convention adjourned sine die. On March 3 Gwin's term expired; and, as there had been no election, there was a vacancy, not in his term but in the office itself, which could not be filled by appointment; and, as it proved, the vacancy lasted for two years longer. Broderick had accomplished his purpose. He had not become senator but he had prevented Gwin from carrying off the prize. He had triumphed as far as it was possible under the circumstances to triumph. And he was still—and with much more chance than Gwin himself—a candidate for Gwin's place.¹

¹Senate Journal, 1855, 75-101, 125-313.

CHAPTER VI.

BIGLER (CONTINUED).

WHEN it became certain in the legislature of 1855, after repeated ballots, that it would be next to impossible at that session to elect a United States senator, the houses began to turn their attention to the condition of the state and the legislation needed by it. In these matters Bigler and his recommendations as governor again came to the front. One of the first and most important was the subject of state printing, which had afforded magnificent opportunities of fleecing the public and had cost immense sums. The office of state printer, some of the extravagances of which have been already noticed, had been originally created by act of January 8, 1850, the second statute passed at the first session of the legislature; and several persons had occupied it before May 1, 1851, when Eugene Casserly, afterwards United States senator, was elected to it. Governor McDougal, however, imagined that the election, which was by the legislature in accordance with the terms of the statute, was irregular and upon that theory, after the adjournment of the legislature, appointed George K. Fitch; and thereupon the secretary of state, ignoring Casserly, delivered over the laws and journals to Fitch, who had them printed in New York. Casserly, meanwhile, having been excluded, commenced suit; and in December, 1851, the supreme court of the state decided that he was the legal state printer and that Fitch's appointment was void. Casserly thereupon purchased Fitch's books and, putting in his own imprint, delivered them to the secretary of state and was afterwards paid upwards of eighty-five thousand dollars for them.¹

In the senate of 1852, the committee on printing made a

¹Senate Journal, 1854, 418-425; *People vs. Fitch*, 1 Cal. 519.

remarkable report on the subject and against the continuance of the system of public printing established by the act of 1850. It said that whenever there had been a chance of filling the office of state printer, nearly every newspaper in the state had put forward a candidate for the profits and what it designated as the "honors" of the office. The result of their rivalry had been too apparent. At each session of the legislature the newspapers had been vying with one another to win the approbation of the greatest number of members and thus secure votes and an award of the printing patronage. Under the circumstances it could not be thought strange, however lamentable the fact, that a large portion of the press had been afraid to proclaim their real sentiments on matters of public interest and had neglected to use such corrective influence on legislation as properly belonged to them. In times, which the committee fondly described as "happily past," water-lot bills and other magnificent schemes of a kindred nature had come up and been decided; and the usually high-toned press appeared to have been awed into silence. The committee proceeded to declare that the state so far had in fact needed but a very small amount of printing—simply the laws and journals of the legislature, together with a little incidental work. The decisions of the supreme court, which were nearly as important to the people as the acts of the legislature and more important than the journals, were still unpublished. Yet this small amount of actual printing had cost the state each year more than the entire expense of carrying on the government of either of the states of Florida, Alabama or Indiana. It had already cost for public printing, during the short time that California had been a state, the extraordinary sum of two hundred and fifty-six thousand dollars and upwards, or over one hundred and twenty-five thousand dollars a year, while all the books in the state library, published by authority of the state, were two volumes of the laws and two of the legislative journals.

The committee went on to remark that it had found upon inquiry that the cost of public printing for the year 1850 in ten of the principal states of the Union, Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, North Carolina, Mississippi, Indiana and Georgia, taken together, had

been less than seventy-nine thousand dollars; while it had cost the state of California, for the very limited amount of printing required in that year, the enormous amount above stated. Nothing further needed to be said, it continued, to prove that the most unheard-of extravagance had so far attended the department of printing; that at least one-third of the civil debt had arisen from that source, and that, unless a reform were effected and that soon, it would be difficult to foresee when the state credit could be redeemed. The committee therefore recommended that the office of state printer should be abolished and the public printing thenceforth be let out by contract; and, a bill to that effect being presented, it was passed on April 29, 1852; and on June 1 of that year a contract to do the work was made with George K. Fitch and Vincent E. Geiger, who on February 3, 1853, assigned to George Kerr & Co. But there appeared to be no help in that direction. Matters still continued in a most unsatisfactory condition; and on May 1, 1854, as recommended by Bigler, a new act was passed, re-creating the office of state printer and providing that it should be filled first by the legislature and afterwards by the people at the state election of 1855 and every two years thereafter. The legislature of 1854, as has been seen, belonged to Broderick; and on May 4 Benjamin B. Redding, one of the strongest and in those days most reputable of his friends, was elected. The expense of the department, however, still continued heavy; and on February 2, 1855, there was an appropriation of one hundred thousand dollars to meet deficiencies in appropriations theretofore made for audited and unaudited accounts of the former and incumbent state printers accruing between January 1, 1854, and February 1, 1855.¹

Another sink, into which much of the money spent in extravagance was drained, was the state marine hospital. In the early days, before counties were settled and organized so as to be able to take care of their sick, there were several state hospitals—one at San Francisco, one at Sacramento and one at Stockton. In the then condition of society, and particularly on account of the absence of families and friends to look after unfortunate individ-

¹ Senate Journal, 1852, 243, 692-694; California Blue Book or State Roster, by E. G. Waite, Sacramento, 1893, 258; Stats. 1854, 142; Stats. 1855, 4.

uals belonging to them, these hospitals were regarded with great favor; and little attention was paid to what they cost. But in 1853 the hospital committee of the senate reported that during the year 1852 five thousand four hundred and eighty patients had been admitted into the three state hospitals and that they had cost the state two hundred and thirty-seven thousand dollars or over four hundred and seventy dollars for each patient. Most of this money had been expended, not in curing the sick but in high salaries, high rents and improvident contracts. It had also been found that, as the counties began making provision for their own people, the state hospitals were of little or no benefit except to those in their own neighborhood and that consequently injustice was being done in favor of those localities receiving state aid and against other portions which, in maintaining county hospitals, sustained their own full proportion of public burdens. The substantial result was the abandonment of the state hospitals as such at Sacramento and Stockton, but the retention of that at San Francisco, known as the state marine hospital. In his message of 1855 Bigler called attention to the fact that in 1854 upwards of twenty-six hundred patients had been admitted to it, of whom more than three-fifths were city patients; and he said that, if the institution was to be kept up, large appropriations in addition to those previously provided would have to be made for its support. Some explanation of what was going on was afforded a couple of months later, when it appeared from the report of a committee appointed to visit the institution—and which visited it to some purpose—that the state was being made to pay one thousand four hundred and seventy dollars per month rent for the building, which had been offered to other parties shortly before for four hundred dollars per month, and that, besides over one hundred and thirty-six thousand dollars paid from January 1, 1854, to March 1, 1855, there was a sum of about one hundred and fifty thousand dollars deficiency yet to be paid. The result was the abolishment of the concern.¹

The state hospital at Stockton, which had thus been abolished as a hospital, afterwards developed into an asylum for the insane

¹ Senate Journal, 1853, 434, 492; Senate Journal, 1855, 57, 504-506; Stats. 1855, 47.

of the state, which proved to be much better managed and has always been regarded with more favor. It was originally established as such asylum by an act of May 17, 1853, although a building for the insane had been erected a year before as a part of the hospital. It was much needed for the reason that there were many more causes predisposing to insanity in the California of the early days than in most other places or in California since then. According to a report of Robert K. Reid, resident physician, made on December 31, 1853, and transmitted to the legislature of 1854, there had been fourteen persons sent to the station-house in San Francisco for insanity in 1850; twenty-two in 1851; thirty-four in 1852, and sixty-five in 1853. This, he said, was a frightful increase. There were in the Stockton asylum two hundred and eighty-four patients in different stages of disease, very few of whom were youths and still fewer aged persons. The hallucinations of a number of those, who were not idiotic or violent maniacs, were very significant of the causes in the country predisposing to insanity. One thought himself God; another imagined himself Judas Iscariot and continually prayed for forgiveness; a third considered himself Napoleon, and a fourth was satisfied with being Umpqua, an Indian chief. One thought his legs glass; another his stomach metal. One considered himself a monkey and would not stand erect; while another regarded himself as a monument and would not move from a rigidly upright position. One claimed all California and the Sandwich Islands with a large lien upon Russia; while another supposed he had ninety million pounds in the Bank of England and had only come to California for pleasure and to study character. One said the Rothschilds owed him uncounted wealth, and he kept an account current with that house, charging it four hundred thousand dollars for every day of his detention in the asylum; while another said he owned all the Spanish claims to land in the state and had made arrangements to fence and cultivate them. One claimed to have found the source of all the gold at a place near the summit of the Sierra Nevada; another that he had been robbed of everything by Page, Bacon & Co. and insisted in designating their crime against him as "piracy on the high seas;" and still another, that he had pur-

chased the state of California from Governor Bigler as a warehouse in which to store consigned goods, and he wanted to know why he was kept out of his bargain.¹

Though the insane asylum thus appeared to have been well managed, with two hundred and seventy-two patients, at an expense of only forty thousand dollars and with no indebtedness, a far different account came from the state prison. From a report of a committee on that institution to the senate of 1854, it appeared that the management of James M. Estell, the lessee, had been and was seriously objectionable. It was even difficult to obtain from him any satisfactory evidence of the number of convicts. There seemed to be about three hundred, nearly one-half of whom were worked at Marin Island in San Pablo bay, others at the prison and in running vessels transporting stone and brick to San Francisco, and still others in getting wood from the hills to burn brick-kilns. They were all required to labor from sunrise to sunset, except at meal times. There were forty-eight cells in the second story of the prison, in each of which four convicts were confined at night. At Marin Island the prisoners were confined at night in an old brig, secured to the shore. There were about thirty men acting as officers and guards—not enough to suppress a revolt or intimidate a combination. It was the lessee's custom to send from six to ten convicts to the hills to procure wood with but a single guard; and escapes were frequent in these parties. A number of prisoners had been sent out to work on ranchos, some with guards and some without. The plan adopted was what was known as the "trusty system"—the trusty being one whose term was about to expire or who was supposed to have behaved well. He was allowed to go on errands for miles about the country, to visit San Francisco on the state prison boats, to sleep without a guard off the grounds, and many other liberties.

Estell had admitted making forty-five thousand dollars within the previous six months; but he claimed that he had lost one hundred and twenty-seven thousand dollars before. His contract gave him sole charge of the convicts for ten years; but he was to properly feed and clothe them, pay all necessary expenses

¹ Senate Journal, 1854; Appendix, 23-26.

for guards and tools to work with, and prepare suitable buildings upon the grounds or prison ships in the bay to keep them secure. Unfortunately there was no provision confining the labor of the prisoners within the prison walls, or to any particular place or class of work; nor was there any requiring the convicts to dress in uniform, or have their heads shaved, or clothes changed, or otherwise to be kept clean. In various instances liquor had been used to excess by officers and guards, and sometimes even by prisoners. There was in fact nothing like a systematic or adequate management, and none could be compelled. As matters stood, on account of the defects in the contract and the danger not only of escapes but of a combined revolt, of which the neighborhood of the prison was in constant fear, the committee recommended that the state should buy the lease back from Estell, who offered to sell out for one hundred thousand dollars and as much more as his brick yards, engines, machinery and stock on hand might be appraised at by commissioners to be appointed one by himself and the other two by the legislature. As affairs turned out, however, nothing of importance was done; and state prison management continued to be a subject of public trouble and annoyance for a numbers of years longer.¹

Another subject, in reference to which something was accomplished under Bigler, was the disposal of what was known as "custom-house block" in San Francisco. This property was a portion of the land below high-water mark, which belonged to the state. The United States required it for custom-house purposes and applied for it. In 1854, Bigler by special message advised against relinquishing the state's title but intimated that it might be done if the United States would assume the Indian war debt of 1850 and 1851 and restore the civil fund. Without entering into a huckstering bargain, however, the legislature consented to an appraisement of the property and to accept one-half its appraised value. This was fixed in the summer of 1854 at three hundred thousand dollars, one-half of which was paid down; the title passed, and immediately afterwards the construction of the United States custom-house began. Sub-

¹ Senate Journal, 1855, 512-520; Senate Journal, 1858, 28.

sequently in 1855 an investigation was set on foot in the assembly as to what became of the one hundred and fifty thousand dollars; and, though it appeared that the money was applied to the payment of interest on state bonds, it turned out that it had passed through the objectionable hands of the bond-speculating banking firm of Palmer, Cook & Co.¹

The anti-Chinese cry, which Bigler was the first to invoke as a political shibboleth, did not prove of much advantage to him. Though the Chinese were frequently abused, as was to have been expected under the repeated assaults made by him as governor of the state, there were a number of citizens and some legislators who thought Chinamen not an undesirable portion of the community and that, in certain occupations at least, they might become exceedingly valuable. Among the latter was Wilson Flint, senator from San Francisco and one of the most prominent and reputable men in the state. In a report, made to the senate in 1855, upon a memorial from Shasta county asking for the removal of the Chinese, Flint, though opposed to their working in the mines, expressed himself as decidedly opposed to the object sought and the recommendations to the same effect by the governor. "I appeal," said he, "to the reflecting men of California not to drive out of our borders this mighty labor power. Is it not better, with modern skill in engineering, to put tools into these fifty thousand pairs of willing hands and, in place of 'trickling ditches,' have torrents rushing along to make the miners glad and the people rich?" He also suggested their employment in reclaiming tule land and raising sugar, rice and cotton. And in conclusion he referred to treaty stipulations, which he claimed entitled them to protection. In the assembly several members entertained similar views. Very few in either house favored removal; not many exclusion; and the result was that, though several attempts were made in both directions, nothing was accomplished except to increase the foreign miners' license tax in a manner that could not be sustained, and to impose upon the masters, owners or consignees of vessels a tax of fifty dollars for the importation of every person ineligible to

¹ Assembly Journal, 1854, 119, 120; Stats., 1854, 41; Assembly Journal, 1855, 26, 369, 609.

citizenship, which was soon afterwards decided to be unconstitutional and void.¹

Another matter, brought to the attention of the legislature by Bigler and in which every Californian agreed with him, was the importance of securing for the state the wintering of the whaling fleet. On March 16, 1855, he presented to the legislature a special message on the subject, in which he said that there were at that time engaged in the Pacific whale fisheries six hundred and fifty ships and barks, manned by fifteen thousand seamen. The American capital invested in them was not less than twenty millions of dollars. In 1853 two hundred and seventy-five of these vessels, manned by eight thousand seamen, visited the Sandwich Islands for repairs and supplies. It was desirable, he said, to divert this vast fleet from the islands to our own commodious ports as more convenient and safer places of rendezvous in the spring and fall seasons. Most of the vessels found their fishing grounds in the extreme northern part of the Pacific and, in going to and returning from the Sandwich Islands, passed by California and sailed several thousand miles further than was necessary.

The real and important wants of whalers in the Pacific, he continued, were: first, a good market for oil and bone or adequate means for shipping the same home; secondly, early advices from owners and friends on the Atlantic seaboard; thirdly, money for disbursing ship, paying off crew and recruiting for another season; fourthly, suitable accommodations for repairing ships, and, fifthly, fresh provisions, vegetables and other sea stores and supplies. In all these respects San Francisco stood pre-eminent over any and all other ports on the coast and was far superior to the Sandwich Islands. The chief reason advanced by whalers against wintering at San Francisco was that under the laws of the state they were subjected to exorbitant charges for pilotage. The rate exacted was eight dollars per foot; and, as the average draught of whalers was about fourteen feet, the average charge for pilotage in and out of the harbor was two hundred and twenty-four dollars, while at the Sandwich Islands it was only a dollar a foot or twenty-eight dollars. This illiberal difference

¹ Senate Journal, 1855, 496-500; Assembly Journal, 1855, 383-385, 402, 403; Stats. 1855, 194, 216; People *vs.* Downer, 7 Cal., 169.

amounted virtually to an exclusion of the business and its advantages from California; and, such being the case, the governor recommended a change by reducing the charges of pilotage for whalers to the same figures as those demanded at the islands. He also in the same connection suggested improvements in the laws relating to sailor-contracts and to that disreputable class of persons who make a business of enticing seamen to desert and enter frivolous and vexatious lawsuits against their employers. In answer to the recommendations thus made, a bill was passed amending the pilot regulations for the port of San Francisco so as to allow whalers to enter or depart without paying pilotage, except when a pilot was employed; and in such cases the charge was to be only at the rate of one dollar for each foot of draught. It took some time for notice of this change in the pilot laws to spread abroad; but in the course of a few years its good effects became apparent in the attraction of whalers to San Francisco, which eventually became the main station for repairs and supplies of the whaling business in the Pacific.¹

Still another subject, of even greater importance to California than the whaling business, was suggested by the governor and brought up and acted on by the same legislature of 1855. This was the establishment of military and post roads across the plains, connecting California with the Atlantic states. The matter was introduced into the senate by a joint resolution offered by Wilson Flint for the establishment of an overland mail-service from the Atlantic to the Pacific. It was referred to a committee, which brought in a substitute recommending to the United States government the construction and establishment of three military and post roads across the continent—the northern one through Noble's pass, the middle through Johnson's cut-off and Carson valley, and the southern through the Tejon or Walker's pass; and a fourth road from the junction of the Colorado and Gila rivers to San Diego. While the subject was under consideration, Caius T. Ryland of Santa Clara presented to the assembly a very full and complete report on the different passes over the Sierra Nevada, known as Noble's, Beckwith's and Cajon, together with the Gibsonville route, Diamond Springs route and Johnson's cut-off, the last

¹ Senate Journal, 1855, 436-440; Stats. 1855, 119.

of which he recommended as the best. The result was the adoption of the substitute resolution for three overland roads; and a start was thus given to what in a few years afterwards became the overland mail routes. In connection with the same general subject, Flint presented a memorial from W. N. Walton for the establishment of an overland express by means of camels and dromedaries; but, though camels were afterwards tried, they did not prove a success. The routes were soon made practicable for fast horses and stage-coaches, against which camels and dromedaries could not compete, and eventually for transcontinental railways.¹

Two other subjects, which might have been of great importance to the state if they had proved practicable, engaged Bigler's attention and were deemed worthy of special paragraphs in his messages. One was the fact that wild hemp of excellent quality abounded at and about Tulare Lake and that it might be so utilized as to become a source of much needed supply and great economic wealth. But unfortunately the Tulare hemp never proved of any practical value and nothing ever came of it. The other subject referred to was that tule, the peculiar growth of the swamp and overflowed lands of California, was calculated to make printing paper of superior quality. He said that almost all the land acquired by the state under the act of September, 1850, was covered with a luxurious growth of tule, indigenous to the soil and averaging at least two tons to the acre annually. The stalk, when ripe and before discolored by rain, was nearly white; and, having a heavy and strong fiber, it was believed to possess all the qualities required. Indulging in fancy, he said that the material from which printing paper was at that time manufactured was worth in the Atlantic states about six cents per pound. But at only two cents per pound or one-third the then market price of rags, each acre of the almost unlimited tule lands of California would annually yield at least eighty dollars or about twelve thousand eight hundred dollars for each one hundred and sixty acres; and this without expense except for collecting it when fully ripe. But unfortunately the tule, like the hemp, did not

¹Senate Journal, 1855, 139, 211, 213, 678; Assembly Journal, 1855, 426-430; Stats., 1855, 308.

turn out well and no one ever reveled in the uncounted streams of wealth which were expected to pour into the country from these indigenous and uncultivated sources.¹

In 1854 Bigler called attention to the exorbitant rates of passage and freight allowed under the corporation laws to steam navigation companies and railroads, amounting to twenty cents per mile for passage and sixty cents per ton for freight. Under such a law five hundred dollars could be charged for fare to the Missouri river and fifteen hundred dollars per ton for freight; and the question of reduction was left entirely to the companies. He recommended an amendment; and one was made by the legislature of that year reducing fare to ten cents per mile and freight to fifteen cents per ton. At the same session he called attention to the fact of the absence of Judge Delos Lake from the bench of the fourth district court and took occasion to state that the resolution of the legislature had granted him leave of absence for four months. He proceeded to state that the number of cases on the calendar of the fourth district court for the April and May term, 1854, was four hundred and seventy at issue and about three hundred not at issue. In one instance of similar absence, he had directed another judge to officiate; but he was now, upon further consideration, of opinion that such action was outside the scope of executive duty and improper. The limit of his power; he thought, was only to appoint in case of a vacancy; and under all circumstances the practice of allowing leave of absence was bad. He therefore recommended a consideration of the circumstances by the legislature; and, to illustrate his own opinion on the subject, he vetoed a resolution allowing leave of absence for four months to Edward P. Fletcher, county judge of Klamath county. About the same time the judiciary committee of the senate expressed its opinion that the governor had full power to appoint a judge to fill a temporary vacancy caused by absence of a district judge, and that the governor's doubt on the subject had been resolved by the supreme court in favor of the power.²

¹ Senate Journal, 1856, 34; Senate Journal, 1855, 33.

² Senate Journal, 1854, 396-398; Stats. 1854, 176, 269; Assembly Journal, 1854, 361-363, 391, 392.

In person Bigler was comparatively short and inclined to corpulency. He was regarded as easy and good-natured in disposition, but could get angry, was occasionally obstinate and sometimes coarse. No other governor bickered so much with the legislature. His disagreements with and pedagogic lecture to the legislature of 1854 were only paralleled by his experiences with and treatment of the legislature of 1855. One of his main quarrels with the latter was on account of their passage of several bills for toll-road and bridge franchises. Bigler vetoed several of them and used expressions in his veto messages, which did not comport with the dignity to which a co-ordinate branch of the government was entitled. In reply the judiciary committee of the assembly took occasion to make a lengthy report, defining and insisting upon the rights of the legislature as opposed to those of the governor. It, however, had little effect; and the bickering went on. In one case he sent word that he had approved an unconstitutional bill for the appointment of judges in certain cases, in the hope that a supplemental act would be passed providing otherwise. On a subsequent occasion he approved an act for a wagon road over the Sierra Nevada in the faith that a supplemental act would be passed to provide for interest on and redemption of bonds to be issued. Still later he vetoed a bill, designed to supersede the old board of land commissioners for the sale of water-lot property in San Francisco, and in doing so took occasion to say in substance that the superseding act was useless; but the legislature thought differently and almost unanimously passed it over the veto. He approved a bill to pay William S. Jewett twenty-five hundred dollars for a portrait of Major John A. Sutter; but said in substance that he ought not to do so and had not done so, except upon a written promise, made to him by Jewett, to furnish a portrait of General John E. Wool without further compensation; and, in approving a bill for the government of the state prison, he took occasion to say that, though it might be inoperative, he thought proper to give it a place on the statute-book.¹

While Bigler and the legislature were thus engaged in carrying on the business of the commonwealth, great changes were going

¹ Assembly Journal, 1855, 517-521, 590-595, 694, 799, 823-829, 853, 863.

on in their constituency. There was a political revolution. With the defeat of General Winfield Scott for the presidency of the United States in 1852, the great Whig party virtually went to pieces; and not long afterwards a mysterious political organization, known as the "Know Nothing" party, began to be heard of and to spread with great rapidity all over the country. It was a secret organization, based upon opposition to foreigners and foreign immigration, and got its name from the fact that its members, being sworn to secrecy, when asked about their order, invariably answered that they knew nothing about it. The first branches of the organization in California were formed in the early part of 1854; and soon afterwards a branch existed in every town and mining camp in the state. They absorbed not only most of the old Whigs but also many of the Democrats and particularly those who were dissatisfied with the faction in power. They were a power even in the early part of 1854; and in the autumn of that year they won a contest in San Francisco. In the early part of 1855 they were a great party. In many places they carried the spring municipal elections. In March at Marysville they carried everything, although their nominations were not made public until the morning of the election. At Sacramento in April the entire Know Nothing ticket was elected; and in many other places their success was so great that the Democratic journals called upon the divided wings of their party, the chivalry and tammany or the Gwin and Broderick factions, to unite and make a united assault upon a common enemy.¹

The efforts to harmonize the Democratic factions, or what was left of them, were measurably successful. But they could not withstand the enthusiasm of the Know Nothings. In May the Democratic state committees united in a call for a Democratic state convention, which met at Sacramento on June 27, 1855. It adopted the usual resolutions, promising everything and especially to squatters and miners. In addition it reprobated, as un-American and anti-republican, the principles of the Know Nothing party and, in view of a recent very general agitation of the temperance question, it expressed an opinion that the time had come when "sober men, and sober men only, should be presented

¹ Davis' Political Conventions, 38, 39.

for the suffrages of moral and intelligent freemen." As soon as the matter of resolutions had been fixed, the convention proceeded to ballot for candidates; and it was almost immediately apparent that Broderick was again in the ascendant. His fight for the United States senatorship was still the engrossing object of his life. He still appears to have deemed it necessary to keep Bigler and Purdy in their positions of governor and lieutenant-governor; and at his direction they were renominated—the former on the second ballot over Milton S. Latham, and the latter on the first ballot. Myron Norton and Charles H. Bryan were nominated for justices of the supreme court. On August 7, 1855, the Know Nothing or American party met in state convention for the first time in California, at Sacramento. Its first business, after organization, was a platform of principles. The resolutions adopted had the merit of being very short, though they promised quite as much as the Democratic utterances. The main features in which they differed from them were in demanding a judicious revision of the naturalization laws, favoring only native born citizens for official position, and inflexible opposition to the appointment or election of any person who acknowledged allegiance to any foreign government—specially meaning the Roman Catholic hierarchy. The candidates for the principal nominations were very numerous; but the successful ones were John Neely Johnson for governor on the fourth ballot and Robert M. Anderson for lieutenant-governor on the first ballot. Hugh C. Murray and David S. Terry were nominated for justices of the supreme court. There was no Whig convention; but there were several conventions of other so-called parties—one of the Settlers and Miners, which however did not make nominations, and two of temperance organizations, whose main achievement was the nomination of Charles H. S. Williams as temperance candidate for justice of the supreme court against Hugh C. Murray.¹

The election took place on September 5 and resulted in a triumph for the Know Nothings, all of whose ticket was elected. Johnson had received a little over forty-nine thousand votes to a little over forty-four thousand for Bigler and was thus elected by

¹ Davis' Political Conventions, 39-49.

a majority of about five thousand. Anderson was elected over Purdy by nearly two thousand majority, and Murray and Terry over Norton and Bryan by about the same.¹ Thus was broken, for the time at least, the Democratic power in California, and with it the Broderick domination. It seems likely that the result was brought about not so much by faith in the principles of the new party as by revulsion against the practices of the old one. Not only in San Francisco, which was the hot-bed of abuses, but in many other parts of the state, political meetings and elections had been for several years conducted with the most open and shameless corruption. Ballot-box stuffers, prize-fighters and all the numerous class of ruffians, whose crimes brought on the vigilance committee of 1856, were in the ascendant and obeyed the nod of the power behind the throne. No wonder reputable Democrats became at last dissatisfied and revolted. They may have said nothing against the methods, which had for the time become party methods; but they voted against them all the same. The outcome showed that the people, and even those who entered the turmoil, possessed some independence and that, though they may not have thought very rationally about what they were doing or whom they were supporting, they were clearly not entirely subject to the will and dictation of old leaders. Upon reviewing the battle and counting up the scores, it became evident that there was a limit beyond which even the Democratic party, that had faithfully and loyally followed the old banners and obeyed the old party cries from the first election in 1849, could not be induced to go. There was no good reason to believe that the number of Democrats had decreased or that there was any very solid or permanent foundation for the Know Nothing party; but every one could see that the Democracy, strong as it was, might be handicapped to its defeat; that under the circumstances there had been bad management, and that, if recovery was to be looked for, a change of policy would have to be introduced and patiently and persistently pursued until the lost ground should be recovered.

A few days after the election, the Know Nothing or American party, encouraged by the results and with a view to continuing

¹ Senate Journal, 1856, 87, 89; Davis' Political Conventions, 50.

its fight and preparing for a vigorous campaign the next year, issued an address in which it gave a somewhat exaggerated though in other respects pretty correct account of the condition of affairs. It represented California as the best, largest and worst-governed country, of which there was any record. In vain had the onerous exactions of the state government been paid without stint. In vain had all the sources of peaceful reformation been exhausted. Long-suffering had not propitiated those in authority, nor indignant remonstrance been able to inspire terror. But evil had followed evil and calamity had been heaped upon calamity until "the young state, which yesterday filled the world with her renown, to-day lies bankrupt, crime-ridden and abject. Much, very much"—it continued—"of our misfortunes is the result of accident and contingencies, which no human foresight could have prevented; but, that crime, fraud and infamy should have aggravated our sorrow, we must blame ourselves and a reckless public policy. But there is always a limit to passive endurance of flagrant wrongs by a free and enlightened people. The history of the election campaign of 1855 in our state is ample testimony that the people united to inaugurate a stronger, wiser and better government. Let it be our fervent hope, brothers, that this time they have not been deceived."¹

On the other hand Bigler in his fourth annual message, presented to the legislature on January 9, 1856, gave a very different and more rose-tinted view. He commenced by comparing the debt of California with the debts of the old states of the Union and appeared to draw comfort from the fact that only three, Missouri, Iowa and Wisconsin, had smaller debts than California, while Indiana owed over eleven millions of dollars; Illinois nearly seventeen millions; Texas nearly seven millions, and Michigan three millions. He then, in language calculated to represent everything he touched in the brightest colors and in the use of which he was an adept, proceeded to say: "From one end of the state to the other, from San Diego to Siskiyou, every valley and plain evidences the gratifying fact that our people are fast turning their attention to agricultural pursuits. The farm-houses dotting our river-sides, the ranches on our mountain slopes, the innu-

¹ Davis' Political Conventions, 50, 51.

merable herds of the southern plains—all evince not only the happiness, contentment and prosperity of our people, but also the permanent character of our settlements and progress in industrial and peaceful pursuits. Immigrants hither come not now to sojourn a brief period and then leave our shores forever; but they come with their wives, children and parents to remain as permanent citizens; to surround themselves with all the comforts, blessings and endearments of home and, adding their mite to the general prosperity, to lay the foundations of the future greatness awaiting this young state. These are the elements, the forerunners of enlightened civilization; and to the harmonizing influences of home, of friends and the fireside circle must we look for future wealth and enduring progress in the paths of peace, happiness and prosperity.”¹

He next spoke of the state prison and insisted that it should at all times be under the direct control of the state, through agents responsible to the people. Events of the previous fifteen months had conclusively settled that point; and it afforded him, he said, sincere pleasure to be able to inform the legislature that in the previous June the lessee had relinquished to the state his contract and turned over to the directors the prison buildings, including a substantial wall around them twenty feet high, all the grounds and the prisoners. Though in his congratulations upon this result he omitted to mention the expense, he took occasion to state that the last legislature, which had accomplished it, had expended for clerical services alone the enormous amount of one hundred thousand dollars—a sum more than treble the amount actually necessary and nearly equal to the entire legislative expenses of many of the states of the Union. But he still reverted with longing eyes to his favorite scheme of extending and selling the water front of San Francisco. “The right of the state to dispose of this character of property,” he continued, “when it can be done without injury to commerce, is clear and unquestionable; and the interests of the state in this rich heritage, if carefully guarded and judiciously disposed of, will, as soon as there is a demand for it, command an amount greatly exceeding the existing indebtedness.” He recommended amend-

¹ Senate Journal, 1856, 22.

ments to the constitution, abolishing the office of superintendent of public instruction and devolving its duties on the secretary of state; and he also recommended abolishing the office of quartermaster general and devolving its duties on the deputy secretary of state; the office of surveyor-general and devolving the duties on county surveyors, and the office of state prison directors and devolving their duties on the warden and principal officers of state.¹

Returning to the condition of the country, he said that "although the shipment of dust and bullion, as exhibited by custom-house returns, would seem to indicate a falling off in the product of the mines during the past twelve months, yet there is no doubt that the aggregate amount yielded has largely exceeded that of any former year." There were nearly five thousand miles of mining ditches, valued at over six millions of dollars, and their increase had been more than trebled within the year 1855. The gold-dust, bullion and quicksilver exported in that year had amounted to over forty-five millions. But it was about agriculture that he had the most to say. He called attention to the fact that in the market reports of the Atlantic states regular quotations were made of the prices paid for Californian wheat and flour, of which over a million of dollars in value had been exported in 1855; and he added: "This is truly a wonderful change to be effected in so brief a period and has no parallel in the history of any of our most progressive and rapidly developed sister states. Among the many and varied products of our prolific soil, wheat, barley and oats may be mentioned as the most important. They are produced in California in greater quantity to the acre than in any of the Atlantic states and of a quality unsurpassed if not unequalled. Rye and corn, although not so reliable as a crop, nor so prolific in growth as in some of the older states, nevertheless yield remunerative returns." He added that the soil and climate of California were admirably adapted to the culture of tobacco and that lands strongly impregnated with alkali, of which there was much in portions of the state, "would, without the use of neutralizing ingredients, produce immense crops of a quality equal to that grown on the island of

¹ Senate Journal, 1856, 24-29.

Cuba." In horses and mules California was excelled by sixteen states; in cattle by seven; in wheat by nine; New York alone excelled it in barley; in potatoes sixteen produced less, and in wine none so much. "It will thus be seen," he went on, "that California, though the youngest of the sovereign states, ranks at this day among the first in all the elements of true wealth; and the rapid progress made in the past warrants the hope that she will soon outstrip all competitors in the friendly struggle for commercial and agricultural supremacy in the markets of the world."¹

Pursuant to his stand on the water-lot question and sacrificing, so to speak, everything for ready money, he thought that salt-marsh, swamp and overflowed lands should be sold up to within one mile of San Francisco and other cities, instead of limiting them to ten miles from San Francisco, five miles from Sacramento, Stockton, Marysville and Oakland, and one mile from the Sacramento river. He again repeated his frequent recommendations in favor of squatters that they should be paid for their improvements. "Of what avail," he exclaimed, "is it that our soil is the most productive and our climate admirably adapted to the culture of all the necessities and luxuries of life, if flowery vales sleep in native beauty and silence and expansive plains are but the roaming grounds and rich pasture fields for the unchecked herd? The true wealth of a prolific soil is to be found alone in the hardy and industrious hand which brings it into subjection, which turns the rich sod with the plowshare, prepares it for the rains of winter and dews at nightfall and which, at harvest season, reaps from fields of bending grain the rich recompense of toil." In the same tone and at much greater length he went on, giving expression to his favorable opinions about the squatting community in general, whom he characterized as enterprising and deserving citizens; in favor of a trans-continental railroad, for which no cost should be spared; in favor of military posts and mail service on the overland routes, and against Asiatic immigration. And finally, coming down to the subject in which he was most interested and upon which he was most sensitive, or in other words to the arraignment of his own

¹Senate Journal, 1856, 31-36.

administration and the stamp put upon it by the public, he said: "For a vindication against aspersion, whether made in the heat of political contests or suggested by the more ignoble rankling of disappointment and revenge, I appeal to the record and to the calm judgment and sense of justice of my fellow-citizens, knowing full well that before such a tribunal and with such an examination the truth in every case will not only appear but receive the credence and support of honest and upright minds."¹

Bigler's appeal did not, nor does it yet, yield much in his favor. He was and is generally regarded as a mere politician and by no means a strong or high-minded one. His administration has always been looked upon as signalized by many abuses and very great extravagance. This was doubtless not all his fault; but he might have done much to change it. Perhaps he did not deserve to get another office from the people; but, whether so or not, he never received another. Possibly, and probably, Broderick, if he had possessed the power, would have provided for him; but Broderick never had an opportunity. In 1857, at the instance apparently of his brother and not of Broderick, President Buchanan appointed him United States minister to Chili, which office he held until 1861. Returning to California he was in 1863 a candidate for congress, but was defeated and ran behind his ticket. Though from that time until 1868 professing to practice law at Sacramento, he devoted most of his time to politics, and on the losing side. In 1866 President Johnson named him assessor of internal revenue for the Sacramento district; but his appointment was not confirmed; and in 1867 President Johnson appointed him one of the commissioners to pass upon the construction of the Central Pacific railroad. In 1868 he established the State Capital Reporter newspaper and continued to be its editor until his death. He died at Sacramento, leaving his wife and daughter surviving, on November 29, 1871.²

¹Senate Journal, 1856, 37-51.

²Davis' Political Conventions, 598.

CHAPTER VII.

JOHNSON.

JOHNN NEELY JOHNSON, the fourth state governor of California, was born in Gibson county, Indiana, August 2, 1825. He was active and comparatively bright and as he grew up studied law. He was admitted to the bar before he was twenty-one at Keokuk, Iowa. In 1849 he came across the plains to California, arriving at Sacramento in July of that year. At first he did some teaming and mining; but, after a very short experience of those occupations, he opened a law office in a tent at Sacramento; and in 1850 was elected city attorney. In the same year he was appointed by President Fillmore special territorial census agent. In 1851 he was appointed colonel on the staff of Governor McDougal and as such took part in the so-called Mariposa Indian war, in the course of which Yosemite valley was discovered. In 1852 he was elected to the assembly from Sacramento county and sat in the legislature of 1853. He was supposed to be a Democrat in politics; but joined the Know Nothing or American party early in its Californian history and was rewarded in 1855 with its nomination for governor over a dozen other candidates. He was elected, as has already been stated, by a majority of about five thousand votes over Bigler, the Democratic or Broderick candidate.¹

Johnson was inaugurated in presence of the legislature of 1856 on January 9. His address on that occasion was a comparatively short document, which was chiefly taken up with expressions of intense devotion to the Union. Almost immediately after delivering it, he announced to both houses that he had appointed William H. Rhodes his private secretary and sent in to the senate the name of David F. Douglass as secretary of state, asking its

¹ Davis' Political Conventions, 598.

confirmation. The senate at once complied. Within a day or two subsequently it gave promise of very thorough and effective reform by indefinitely postponing two applications of county officers for leave of absence—one from Caleb Dorsey, district attorney of Tuolumne county, and the other from Samuel H. Brooks, treasurer of San Joaquin county. But the hopes encouraged by this action were soon afterwards dashed to the ground by the adoption of a resolution by sixteen ayes to nine noes, and concurred in by the assembly, allowing Solomon Heydenfeldt, justice of the supreme court, leave of absence for four months. The other two justices, Murray and Terry, wrote that they were willing to perform all the duties of the court and expressed their assurance that business would not be delayed, nor the public interests suffer; but within a few months, Heydenfeldt being then absent and Terry a prisoner in the hands of the vigilance committee of San Francisco, the business of the court came to a stand-still and the public interests suffered very seriously.¹

The new senate also gave promise of effecting an improvement in the practice of changing names. The legislative dockets of the preceding sessions had been lumbered with bills of that character; and from the number presented in the early part of 1856 it seemed that the business was likely to increase. There did not appear to have been much discretion exercised in some of the changes made. In 1854, for instance, a man dissatisfied with being called "William Alexander Smith" had his name changed to "Amor de Cosmos." In 1855 there were more changes than in 1854. In February, 1856, while there were four bills of the kind before the senate, the judiciary committee of that body recommended the indefinite postponement of all of them; and they were accordingly thrown out. That committee further reported against a bill which had been introduced on the subject of changing names, giving its opinion that persons could call themselves what they pleased, and such a law was unnecessary. But this brought out an opposition report to the effect that persons had not the right to change their names; that there was a law of society that forbade it, and that no one should be permitted to do so, except in very special cases and not then

¹ Senate Journal, 1856, 89-123, 209, 217.

unless authorized by statute. But with that report the subject seemed to substantially drop. The bill did not pass, and yet people found they could not very well change their names without legislative sanction. Even at this session, later on, a man with the objectionable name of Schlechtway got it changed to Robinson; and the practice of applying to the legislature continued until 1866, when the power was given to the county courts.¹

Whatever impression may have been created by Bigler's message about the condition of the country, it soon became apparent that there was trouble and difficulty in many directions. Almost immediately following Bigler's congratulations upon the relinquishment of the state prison by the lessee to the new directors, came a doleful memorial from the directors, representing everything as in a very bad condition and urgently demanding large amounts of money to carry on the institution. They said that the prisoners were actually suffering for want of food and clothing. The work of quarrying stone and making brick was not remunerative in the winter season or for about five months of the year. Nothing could be done until spring. Meanwhile the directors were destitute of supplies for daily use and the prison had no credit. It would take at least fifteen thousand dollars per month to meet expenses. There were one hundred and fifty prisoners in one room, and the erection of a new building or a new prison was absolutely necessary. A few weeks subsequently a joint committee of both houses, after investigation, made a report on the facts. It said that in the seven months from June 1, 1855, the date of the transfer to the directors, to January 1, 1856, there had been created obligations or claims against the state in reference to the prison of over three hundred and eighty-eight thousand dollars. More wall had been built than called for; and it had been built in disregard of symmetry and in gross violation of law. The wall inclosure, which was intended to be a rectangle, was one hundred feet out of square, the south wall being one hundred feet longer than the west and forming an acute angle at the southwest corner and an obtuse angle at the

¹ Stats. 1854, 37; Senate Journal, 1856, 237, 238, 461-464; Stats. 1856, 52; Stats. 1865-6, 103.

northwest. The mortar had been made of sand from the beach and mixed with salt water, so that it attracted moisture and would not set; and the work itself was very poor. The title to sixteen acres of land adjoining the prison grounds proper, which James M. Estell, the lessee, had assumed to sell and which had been purchased by the state, was invalid on account of Estell's irregularities. The committee in conclusion said it did not want to charge fraud in reference to the state prison affairs, though the testimony beyond question authorized suspicions of it; and it recommended that suits should be brought by the attorney-general against the directors for damages for neglect and irregular and informal proceedings in office. But unfortunately the exposure of these abuses had hardly been made when they were covered up. No suits were commenced. After immediate temporary relief, an act was passed making a permanent appropriation and creating a few more offices; and the subject was then dropped until it rose, in uglier form than ever, to trouble the next governor.¹

The exposure of abuses in state prison affairs seemed to excite inquiry in several other directions and occasioned a few additional sharp reports. One was in regard to the extravagance practiced in various state offices, which was shown to have been so extensive and reckless as to be fraudulent. Another was in regard to a certain judgment of nearly seventy-three thousand dollars obtained on a worthless claim by Jesse Carothers against the state in the superior court of San Francisco, of which John Satterlee was judge. The scheme seemed to have been worked by several adepts at such business and chiefly by means of a compromising stipulation procured by Carothers from S. C. Hastings, the attorney-general. The report pronounced the agreement between Hastings and Carothers fraudulent and charged general gross and culpable negligence. But as it further appeared that Judge David O. Shattuck, who succeeded Satterlee, had set aside the judgment as null and void, there was nothing of value lost. Still another report was in reference to alleged frauds of Abia A. Selover, the auctioneer employed to sell the state's remaining interest in the beach-and-water-lot

¹Senate Journal, 1856, 149, 150, 356-383; Stats. 1856, 27, 48, 86.

property of San Francisco in October, 1855. The sale took place under an act passed May 1, 1855; and it was said that Selover so manipulated as, by rapidly skipping from one part of the catalogue to another and accepting bids of persons instructed in the scheme before others could be heard, to enable Andrew J. Butler and a few others in the combination to buy lots worth thousands at eight dollars apiece. According to the testimony of a number of reputable citizens taken on the subject and reported to the legislature, the sale was unique for trickery and sharp practice; and a significant fact was that all who figured prominently in it were strong political supporters of Broderick, at that time still the power behind the throne.¹

Had the election resulted differently and the Democracy won, it is not likely that there would have been so much exposure. But the new men, who had been brought into office, wanted to justify the choice of themselves over their adversaries and thought no way more proper than to rake open old sores of villainy and corruption. The triumph of the Know Nothings, however, was not as complete as might at first sight have appeared; nor did their exposures add much to their influence. The Democracy or rather Broderick, who represented it, though defeated, was by no means destroyed. He had failed in securing votes enough to make him United States senator; but he had not given up the fight for that office; nor did he cease for a moment in planning and scheming for it. As matters had turned out it became necessary for his interests to again prevent an election to fill the place vacated by Gwin on March 3, 1855. There were of course a number of Know Nothing candidates for the position, among whom the most prominent were Henry A. Crabb and Henry S. Foote; but there were not Know Nothing votes enough on joint ballot to win. Broderick's problem was to prevent a combination or fusion of any of the other discordant elements with the Know Nothings; and for this he labored with his accustomed skill. The question was met in the senate. A concurrent resolution to go into joint convention having been offered, a motion was made to indefinitely postpone it; and, after a struggle, the motion prevailed by a vote of nineteen ayes to

¹Senate Journal, 1856, 426-428, 608-652; Stats. 1855, 226.

fourteen noes. Not long afterwards, for the purpose of preventing any further attempts in that direction, a resolution was adopted to postpone all resolutions, bills or other propositions in reference to the election of a United States senator until January, 1857; and with this the subject dropped.¹

Johnson's first message deserving special mention was in relation to Indian war claims. The amount of the debt for the Indian wars in California of 1850 and 1851 was a little over nine hundred and twenty-four thousand dollars. This had been assumed and an appropriation made to pay it by the general government. But when Indian war bonds, representing portions of the debt, were sent on to Washington, Jefferson Davis, United States secretary of war, insisted that he was required by the appropriation act to examine and ascertain the amount of the expenses actually incurred and disbursed, and that he must therefore have something more in the way of proofs than mere bonds and warrants issued by the state. Johnson at first recommended sending on the vouchers and employing Congressman James W. Denver to look after the business; and he added that Denver would doubtless serve without compensation. But very shortly afterwards Henry Bates, who had been elected state treasurer on the same Know Nothing ticket with himself, offered his services to go east and accept and pay out the money there—thus, as he represented, saving the state fifty thousand dollars, which it would cost to transmit the money to California. Thereupon Johnson changed his mind and proposed a commission to consist of Denver, Bates and A. J. F. Phelan to prosecute the claims before the secretary of war and superintend the payment and cancellation of the bonds. This, to say the least of it, looked like a very un-business-like proposition, particularly so far as Bates was concerned; but the legislature settled the matter by appointing a commission, consisting of Samuel B. Smith and James W. Denver with Phelan as their clerk; and by them the business was attended to.²

One of the next most important matters to engage attention was the Chinese question. Bigler had started the political agitation on this prolific theme and, as has been seen, the legislature

¹Senate Journal, 1856, 160-168.

²Senate Journal, 1855, 26, 27; 1856, 133, 226-232; Stats. 1856, 206.

of 1855 passed several bills intended to exclude Asiatics. One of these bills fixed the foreign miners' license tax at four dollars per month until October 1, 1855; then at six dollars per month for the next year; eight dollars per month for the third year, and so on increasing two dollars per month every year. The whole general subject came up before the senate committee on mines and mining interests; and a majority of it, represented by Charles Westmoreland, reported in favor of repealing the law and confining the tax to four dollars per month, as it had been before. He said that, whether the Chinese in general should be excluded or not, those who were already in the country and had been invited hither by our policy in the past should not be impoverished or oppressed. It appeared from the controller's books that the amount of revenue in the shape of foreign miners' license taxes paid into the state treasury by Chinese up to January 12, 1856, was in round numbers four hundred and thirty thousand dollars; and it was to be supposed that the county treasuries had received as much more. All would be jeopardized if the act of 1855 were allowed to stand; and the tax ought therefore to be restored to its former figure. The majority report brought out a counterblast by the minority, represented by Samuel H. Dosh. It opposed any change in the law. The question involved was of more importance than any other before the legislature. There were between forty and fifty thousand Chinese in the state; they were not desirable residents; and the law as it stood would encourage them to leave. There were many reasons why they were not wanted. In the first place, continued the report, their presence was "a great moral and social evil—a disgusting scab upon the fair face of society and putrefying sore upon the body politic—in short, a nuisance that, unless speedily abated, was likely to work tremendous and lasting injury to the state;" in the next place, they threatened "the entailment upon us of a strange system of slavery, obnoxious to our institutions;" in the third place, they degraded labor and depreciated its value to the detriment of the working men of the state, at whose instance and in obedience to whose demands the law as it stood had been passed; in the fourth place, the Chinese were incapable of becoming citizens; and finally, the law had

operated and was operating precisely as wished by its authors and the public did not demand or desire any change. But, notwithstanding the improvement in bitterness of this attack against the Chinese over anything that Bigler had been able to say, the legislature followed the majority report by superseding the act of 1855 and restoring the tax to the permanent amount of four dollars per month.¹

In addition to the increase in the foreign miners' license tax, the legislature of 1855, as has been seen, imposed a tax of fifty dollars upon the master, owner or consignee of every vessel for every Chinaman imported.² This tax was to be collected at the port of San Francisco by the commissioner of emigrants, to which office Bigler had in 1853, under a previous statute, appointed Edward McGowan. In the early part of February, 1856, McGowan, much against his will, was obliged to make a report of the transactions of his office. He said that since September 1, 1855, ninety-six Chinese passengers had arrived and been reported to him; but that in no case had the fifty dollars head-money been collected for the reason that the act imposing it was unconstitutional and everybody, who knew anything, knew it. All that he had collected from September 1, 1855, to February 1, 1856, had been eighteen hundred and thirty dollars, much less than the expenses of his office. The year before he had paid into the state treasury about thirty thousand dollars; but this year the sum would scarcely reach three thousand. So far, during the year, many more Chinamen had left the state than had arrived. But it was not a part of the duties of his office to record the departures; and therefore he had nothing more to say. As McGowan was the same individual who had been chairman of the Broderick wing of the Democratic state convention in 1854, he seems to have regarded himself as a person whom no one would care to call to account. But, if he thought so, he was mistaken. However it might have been if the Know Nothings had been defeated, it was different now. The senate committee on mines at once reported that, whereas he had disregarded and neglected his duties, arrogated judicial power in assuming to

¹ Stats. 1855, 216; Senate Journal, 1856, 398-401, 457-460; Stats. 1856, 141.

² Stats. 1855, 194.

declare a statute unconstitutional and committed a contempt against the legislature, he ought to be removed from office, and a suit commenced against him and his bondsmen for malfeasance in office. Governor Johnson supplemented this action a few days afterwards by removing McGowan and appointing Alexander G. Abell commissioner of emigrants in his place.¹

Several more than ordinarily important bills, unpartisan in character, were passed by the legislature of 1856 and received Johnson's approval. The first that may be mentioned was a bill for the construction of the state capitol, which had been introduced into the senate by William I. Ferguson. It was afterwards declared unconstitutional by the supreme court,² but it was the forerunner of subsequent acts under which the capitol at Sacramento was finally constructed. Another was a bill to repeal the charter of the city of San Francisco, to establish the boundaries of the city and county of San Francisco and to consolidate the government thereof, usually known as the "consolidation act." It had been introduced into the assembly by Horace Hawes of San Francisco. Though not the first act of that kind, nor the first attempt at consolidation, it had features about it that made it in substance an original piece of legislation. Its main characteristics were simplicity, economy and checks upon official wrong-doing, all very important at the time; and, as various circumstances and especially the vigilance committee and its successor, the People's party of San Francisco, took it in hand and carried it out in spirit as well as in letter, it had extraordinary success and has continued for more than forty years the fundamental law of the municipality of San Francisco.³

Meanwhile national affairs were fast becoming more and more complicated. The presidential election was to take place in the autumn; bitter discussions all over the country had commenced, and party strife was waxing hot. California, though far removed from the national center, could not escape being drawn into the conflict. James T. Farley of Amador county, who had been elected speaker of the assembly, may be said to have started the

¹ Assembly Journal, 1856, 321-340; Senate Journal, 1856, 415, 416.

² Nougues vs. Douglass, 7 Cal. 65.

³ Senate Journal, 1856, 506, 767; Assembly Journal, 1856, 109, 652; Stats. 1856, 110, 145.

discord. He introduced into that body a concurrent resolution condemning the election of Nathaniel P. Banks to the speakership of the house of representatives in congress on the ground that Banks was to be considered as an exponent of sectional feelings and principles diametrically opposed to the spirit of the constitution of the United States. The resolution was adopted by the assembly; but in the senate it did not meet with the same success. In that body John D. Cosby of Trinity county defeated it by moving a substitute that California should decline to express any opinion on the subject; that it should adhere to the policy of non-intervention; that it should oppose all propositions of a sectional character from whatever quarter of the Union they might come, and that it should maintain a conservative position and take no action through the legislature which could tend to destroy its conservative influence in congress.¹

About the same time, however, Cosby introduced into the senate a proposition, which was calculated, if it had had any chance of success, to occasion much more political rancor than Farley's firebrand. This was a bill to create three states out of California. There had from very early days been talk of dividing the state—some of the advocates evidently contemplating the making of a slave state out of the southern portion, while others thought the result would be two free states instead of one. The first project of making three states, a north, south and middle, seems to have been that of David F. Douglass of San Joaquin, who in 1855 introduced a bill to that effect into the assembly. It never came up for passage; nor did Cosby's in 1856, though it was favorably reported on.² On the other hand, several remarkable moves were made in reference to the eastern section of the state. One was an application to the senate of 1856, by persons living on Carson river east of Lake Tahoe, asking that their valley might be included in the state of California.³ Another was an attempt of residents of the Honey Lake section of country east of the Sierra Nevada to take themselves out of the state and form a new territory to be called Nataqua, a name which, as they explained it, meant woman. The chief mover in

¹ Assembly Journal, 1856, 399-403; Senate Journal, 1856, 456.

² Senate Journal, 1856, 390, 571; Assembly Journal, 1855, 460.

³ Senate Journal, 1856, 448-452.

this scheme of gallantry was the old pioneer Peter Lassen, for whom Lassen's peak and Lassen county were named, who had moved from the Sacramento valley to Honey Lake a few years previously, and an individual named Isaac Roop, who had been postmaster at Shasta. Lassen had gone thither seemingly because he had become very unpopular in the Sacramento valley on account of his having induced overland immigrants in 1849 to leave the ordinary and accustomed emigrant roads and take a long and difficult way around, so as to pass by his rancho, greatly to their loss, discomfort and danger; and Roop had apparently followed suit for the purpose of finding a career for his enterprising energy and his ambition to make a figure in the world. Whatever may have been their intentions and objects, they certainly carried on business with a high hand. On April 26, 1856, they and eighteen others met at what was known as the Roop House; elected Lassen president and Roop secretary and thereupon proceeded to declare Honey Lake valley not within the limits of California, and to erect it and a very large tract of country in addition into the territory of Nataqua. The meeting adopted laws and regulations, giving each settler a right to six hundred and forty acres of land; requiring every claim to be surveyed and recorded; appointing Lassen surveyor and Roop recorder; laying out a town in which every one, who would build a house, was to have a lot and the lots not so taken to belong to Roop, and establishing certain public roads of the magnificent width of one hundred feet as far as they ran.¹

It is perhaps hardly necessary to add that both the Carson valley and Nataqua schemes were impracticable. In 1852 a bill had passed the California legislature for the erection and organization of a new county to be called Pa-Utah, including Pyramid Lake, Carson Lake, Walker Lake and all the northwestern part of the present state of Nevada, provided congress would cede the territory to California; but it never did so; and the act was therefore ineffective and afterwards repealed.² Carson valley, unless ceded, could no more be made a part of California than

¹ Illustrated History of Plumas, Lassen and Sierra Counties, San Francisco, 1882, 344-346.

² Stats. 1852, 193; 1859, 186.

Pa-Utah; and cession was never seriously thought of. As to Nataqua, the whole scheme was based upon ignorance of the boundary line of California. The originators, however, were evidently not disposed to be confined within narrow limits. They proposed reaching out for their new territory as far as the one hundred and seventeenth meridian of longitude so as to include about fifty thousand square miles. But it was as difficult to take away from California as to add to it; and neither succeeded. The projectors were as unfortunate as their schemes. Lassen, whom ill-will followed into the Honey Lake country, was murdered there a couple of years subsequently; and as for Roop, after he had been laughed at for some time on account of the Nataqua business, he assisted in a still more ridiculous project for getting up, with a handful of men, a pretended territory of Nevada, of which he was to be the governor.¹

Meanwhile the legislature of 1856, the first during Johnson's administration, drew to its close and finally adjourned on April 21, only about three weeks before the general bad condition of affairs led to that extraordinary uprising of the people, known as the San Francisco vigilance committee of 1856, with which Johnson proved unable to cope and upon and against which his prospects and reputation were wrecked. It is not likely that anybody saw what was coming; but Farley, the speaker of the assembly, upon declaring his house adjourned sine die, took occasion to make a series of remarks, which, though perhaps not in very good taste, were very significant of the evil pass to which things in general and legislators in particular had come. "How many of us," he exclaimed, "have remembered that, before we were permitted to enter upon our duties, we solemnly pledged our honor and recorded our oaths to the effect that in all our official conduct we would act only for those whom we represent and not for ourselves? Have we all fulfilled these obligations or have some of us been willing to sink our honor, our oaths and our most sacred offices to increase our own transitory fortunes? What indeed is the fortune, the fame or even the life of an individual, when compared with the fortune, the welfare and honor of a whole people? But, gentlemen, we are not responsible to

¹ Illustrated History of Plumas, Lassen and Sierra Counties, 333, 347, 355.

each other for our official conduct"—and so on to considerable length.¹

The next legislature met at Sacramento on January 5, 1857. One-half its senators and all its assemblymen were elected at the same time and in the midst of the same political turbulence and strife, chiefly in regard to the slavery question, which accompanied the choice of James Buchanan as president of the United States. In California the struggle, though not so bitter as in some other sections, was marked with much excitement. The Know Nothing party met in convention at Sacramento in November, 1855; the Democrats at the same place in March, and the Republicans, for the first time, in April, 1856. The last named, as a new party and particularly as an anti-slavery party, was subjected to many outrages. It was denounced on nearly every side as an "abolition" party; and that name alone produced the effect of flaunting the red flag in a bull ring. Their meetings were often disturbed and broken up and in some cases their speakers and prominent men were maltreated. Nevertheless they persisted and showed a bold front, disclaiming any intention of in any manner interfering with slavery in the slave states; but demanding and insisting that it should not be permitted in any of the territories. Edwin B. Crocker, one of the first and most prominent Republicans, wanted to go further and resolve that the repeal of the Missouri compromise had utterly destroyed all compromises respecting slavery not embraced in the federal constitution, and that no more slave states should upon any pretense be admitted into the Union. But other members of the party regarded this doctrine as too radical for the times; and Crocker's proposition was withdrawn. The Know Nothings, or American party as it called itself, indorsed Millard Fillmore and Andrew J. Donelson for president and vice-president of the United States; the Democratic party, James Buchanan and John C. Breckenridge, and the Republican party, John C. Fremont and William L. Dayton. The election resulted in favor of the Democrats—the state vote for Buchanan being very nearly fifty-two thousand, that for Fillmore a little over thirty-five thousand, and that for Fremont a little over thirty thousand. The Democrats

¹ Assembly Journal, 1856, 864.

Charles L. Scott and Joseph C. McKibben were elected to congress.¹

Whatever prestige the Know Nothings had gained and enjoyed in 1855, they entirely lost in 1856; so that, when Governor Johnson met the legislature of 1857, he found it completely Democratic. He therefore had very few political friends in the body upon whom he could rely for support. He was, so to speak, a political leader without a following. But there was one circumstance that gave him a certain influence and power with both houses and especially with the members who were favorable to the aspirations of David C. Broderick for the United States senate; and this was a mutual hatred of the vigilance committee. That organization, besides seriously interfering with the objectionable methods of conducting elections in San Francisco, of which Broderick had on various occasions availed himself, and besides throttling one or two and exiling a number of Broderick's henchmen, had gone so far as to make some unpleasant inquiries of Broderick himself and called him before it as a witness. He had attended and given his testimony, but apparently did not enjoy the contact. At any rate, he soon afterwards left San Francisco and spent a considerable time in traveling around the country and, in a quiet but very effective way, organizing a campaign for Broderick Democracy in nearly every important section of the state. His plan was very appropriately called a "still-hunt," and resulted not only in a very heavy vote for Buchanan but also in a decided majority for Broderick.

It is doubtful whether Broderick himself had any great personal hatred for the San Francisco vigilance committee. There is reason to believe that he admired its pluck and determination to reform abuses; and it is not unlikely that he was rather grateful than otherwise for its ridding him of some of his too obsequious friends. At any rate he did not denounce it with the vigorous vituperation of which he was capable and which he was ever ready to express when he felt very angry. But be this as it may, most of his supporters and friends that were elected to the legislature of 1857 had no love for the vigilance committee and, if not ready and anxious to speak against it themselves,

¹ Davis' Political Conventions, 50-74.

they were very willing to listen to others speak against it. And this was the kind of an audience to whom Johnson addressed his annual message of January 7, 1857. He commenced with a reference to the political troubles that had convulsed the country from one end to the other, and intimated that a very great danger had been run and been passed. "The choice of the people in the recent presidential contest," said he, "has been everywhere proclaimed, and still our flag floats proudly on the breeze with not a star unsphered—the emblem of that Union which, through all emergency, has ever yet been cherished and maintained. Let us then congratulate ourselves that the storm has passed away and that the elements of our political existence have subsided to a peaceful calm."¹

But the main and most touching part of the message, that in which the governor personally was most interested and concerned, was in reference to the San Francisco vigilance committee. He entered at length into his own way of looking at it. Notwithstanding all he could say, however, he could not avoid the appearance at least of being on the defensive. Without attempting to describe the condition of affairs, which brought about the popular outbreak, or to say anything about his own vacillations and shortcomings, except that he had been deluded, he contented himself with pronouncing the movement treason and rebellion and declared that the state had been powerless against it and the authorities compelled to calmly await the issue of events. "I have deemed it not improper," he said in conclusion of his account, "to detail the more important incidents of this period and, without regard to personal considerations, have presented an authentic history of my official acts in this connection in the conscious belief, not less than in the earnest hope, that by the judgment of the people the shafts of falsehood and calumny will be repelled and the course of the executive triumphantly vindicated and sustained. In all that I have done or sought to do, I heeded not the plaudits of the populace, nor feared their threats. I know no higher law than the constitution of my country; and, as a rule of action alike incessant and inflexible, the observance of the duties it enjoins will ever be

¹Senate Journal, 1857, 22.

paramount in my regard as a public officer and private citizen.”¹

Much of the time of both the houses was taken up with “questions of privilege,” chiefly growing out of vigilance committee affairs; and as a rule these were violent and bitter. But there was also a sprinkle of the ridiculous in the proceedings. The Rev. Dr. William A. Scott, minister of Calvary Presbyterian church in San Francisco, had seen fit to take sides and preach against the vigilance committee and had thereby thrown himself, so to speak, into the arms of its opponents and enemies. On this account a proposition was made in the assembly, on the day after its meeting, to invite him to preach in Assembly Hall on Sunday, January 11. As an offset, Assemblyman William W. Shepard of San Francisco moved to amend by adding an invitation to the Rev. Edward S. Lacy and the Rev. Rufus P. Cutler, two other ministers of San Francisco, who had taken sides with the vigilance committee, to preach in the same place—one on Sunday, January 18, and the other the Sunday following. This, as was to have been expected, was voted down; and the original motion was then adopted by sixty-five ayes to thirteen noes. It can only be conjectured what kind of a “sermon” Scott would have preached; but he answered the invitation by saying that it was the week of holy communion in his congregation and he could not absent himself. He took occasion, however, to send up to the legislature “as a present to each member a copy of his little volume ‘Trade and Letters’ as a small token of the author’s esteem and good-will for the senators and representatives of the people of California.” The senate, when the box arrived and was opened and the books distributed, as if not to be outdone in compliments, on motion of Jesse O. Goodwin of Yuba, returned a vote of thanks for “his valuable work” and “our best wishes towards him as a man and a divine.”²

In addition to what he had to say about the Union being saved and his own course in reference to the vigilance committee being triumphantly vindicated, Johnson made a number of recommendations in his message. Before adverting to them, it may be proper to state that William H. Rhodes was no longer

¹ Senate Journal, 1857, 25, 26.

² Assembly Journal, 1857, 16-19, 93; Senate Journal, 1857, 360.

his private secretary, having been succeeded by William Bausman on April 21, 1856.¹ His principal recommendations were: first, that tax deeds should be conclusive evidence of compliance with the revenue laws, unless the claimant should within thirty days serve a notice that he would contest the legality of the sale; second, that assessors should be allowed a percentage on taxes collected; third, an income tax; fourth, a stamp tax; fifth, the calling of a constitutional convention; sixth, the substantial repeal of the attachment law; seventh, such a modification of the insolvent law as to render it practically worthless; eighth, various amendments in the laws relating to married women and particularly abolishing references in divorce proceedings and requiring the district attorney to appear in all cases for the defense and allowing him a fee for defeating the application; ninth, the giving of a landlord a lien on the property of his tenant for his rent, and, tenth, the election of notaries public by the people. There were a few others; but the legislature paid no attention to any of them.²

Several of his recommendations were not bad and in fact some years later, under more favorable circumstances, were adopted. One was requiring a declaration of homestead to be recorded; another, a general law for the incorporation of cities and towns, and still another, a law for the registration of voters. In reference to a constitutional convention he said that the chief opposition to it had been based upon a fear that a new constitution might be adopted without a submission to the vote of the people, but that such an objection was obviated by a recent amendment to the constitution, which required such a vote in any case. He referred to an amendment of section two of article ten of the constitution of 1849, which had been proposed in the legislature of 1855; agreed to by the legislature of 1856 and ratified by vote of the people on November 4, 1856. In regard to abolishing references in divorce cases and requiring all such trials to be in open court, he gave as one ground for his recommendation that all reasonable obstacles should be placed in the way of divorces and that trials in open court would insure more thorough

¹ Assembly Journal, 1856, 863.

² Senate Journal, 1857, 32-42.

investigations than the taking of testimony by a referee. And yet he at the same time and in the same message recommended that in all chancery cases the testimony might be taken by deposition not only as more consonant with equity practice but particularly because it would "give greater precision and certainty to the evidence."¹

But, as has been already stated, it made little or no difference what Johnson recommended, as the legislature was not disposed to pay attention to him. An effort was made in the senate to pass a law for the calling of a constitutional convention on the ground mainly that "the recklessness, extravagance and profligacy, which had continually marked the career of the state government ever since its first organization, ought to be sufficient reasons of themselves to convince all that there was something radically defective in the constitution;" but the great majority could not see or be convinced that relief against such recklessness, extravagance and profligacy was to be found, and declined to seek it, in that direction.² On the other hand they made up their minds that they would attend to a little of it, which was under their immediate supervision, in a much more direct and drastic manner. William A. Cornwall, who had been elected secretary of the senate in 1855 but had been removed for a violent and unjustifiable personal assault upon Charles A. Tuttle, senator from Placer county, for something spoken in debate, had presented a bill claiming extra pay, in addition to his salary, for furnishing the state printer with a copy of the senate journal for publication. He was clearly not entitled to make the claim, as his salary was ample and he was allowed plenty of assistants to do the work; but a peculating practice had grown up among secretaries to demand such pay and it had been allowed. It is likely that the vicious practice would have continued, if it had not been for Cornwall's violence. His demand was scrutinized and rejected in 1856 as unauthorized and in substance fraudulent. He persisted and presented it again in 1857, when it was again and finally thrown out by indefinite postponement.³ Another pecu-

¹ Senate Journal, 1857, 36, 37, 40-42.

² Senate Journal, 1857, 153-163.

³ Senate Journal, 1855, 460, 467, 480; Senate Journal, 1856, 182, 183; Senate Journal, 1857, 115, 116.

lating practice was exposed by David F. Douglass, the secretary of state, in reference to claims for the translation into Spanish of certain public documents. Augustin Ainsa, the translator, had been demanding and receiving pay to which he was not entitled. His scheme was promptly crushed and the attorney-general instructed to commence suit for what had already been improperly paid.¹

The most remarkable work in this line, however, by the legislature of 1857 and perhaps by any legislature in California, was the impeachment of Henry Bates, treasurer, and George W. Whitman, controller of state. The charge against Bates was that he had illegally, if not corruptly, placed upwards of eighty-eight thousand dollars in the hands of Palmer, Cook & Co. for the avowed purpose of paying the interest on state bonds in New York in July, 1856, which was not paid. A report to that effect was presented in the senate in January, 1857. Soon afterwards the assembly drew up articles of impeachment against him, not only for intrusting Palmer, Cook & Co. with public money without taking security therefor, but also for purchasing state warrants with state coin and pocketing the difference in value; for receiving the money of counties and substituting warrants in place of it, and for a corrupt combination with E. A. Rowe, president of the Pacific Express Company, for loaning state money. A few days subsequently the assembly drew up articles of impeachment against Whitman, charging him with disregarding the orders of the board of examiners and obstructing them in the discharge of their duties; with refusing to give information about his office when lawfully demanded by the governor; with illegally drawing warrants in favor of James M. Estell, and, in corrupt combination with E. A. Rowe, with authorizing the receipt of warrants in place of money actually forwarded by various counties. As soon as the articles were finished and approved, the assembly appointed managers to present and try them at the bar of the senate, which on its part adopted rules of trial and resolved itself into a high court of impeachment as provided by the constitution.²

¹Senate Journal, 1857, 105, 113.

²Senate Journal, 1857, 142, 143, 297-304, 340-346.

Bates' case came on in March. Meanwhile he had been removed from office and the grand jury of Sacramento county had indicted him for substantially the same offense. He alleged these facts as a reason why he ought not to be tried by impeachment; but his plea was overruled. He had previously very strenuously denied that there was any corruption in his office; but, when his technical plea was decided against him, he refused to answer to the merits and was convicted by a practically unanimous vote. When he came up for sentence in accordance with the provisions of the constitution, it appearing that he had in the meanwhile resigned, the sentence recited the facts of his conviction on all the charges alleged against him and his resignation after impeachment, and then declared him forever afterwards disqualified from holding any office of trust, honor or profit under the state.¹ Whitman, on the other hand, made a very determined struggle and fought the charges against him inch by inch. Among other incidents of the trial, E. A. Rowe, who had been indicted by the grand jury of Sacramento county for his part in the transactions complained of, was brought in from prison as a witness; but objection was made and he was withdrawn. The result of his trial was an acquittal on all the charges—the highest vote against him on any of them being only six.²

¹ Senate Journal, 1857, 406, 408-425, 457-465.

² Senate Journal, 1857, 268, 437-447, 596-601, 744-748.

CHAPTER VIII.

BRODERICK.

BRODERICK had at length found his opportunity. He in substance controlled the legislature of 1857. He had never for a moment given up his determination to become United States senator or loitered in its pursuit. He had, after failing to bring on an election in 1854, when he might have been elected, managed with consummate skill to postpone an election in 1855 and again in 1856, when he could not have been elected. On both these occasions, it looked as if he were completely defeated, without a chance of recovery. But, instead of becoming discouraged or giving up the struggle, his apparent defeat only seemed to give him greater courage and impel him to greater exertion. He was now on top—and with an unfailing and overwhelming support. But when he found everything in his own hands, he no longer sought the place for which he had previously battled. The term of Gwin's successor, which he had so persistently fought for, commenced in March, 1855, so that in 1857 two years of it had already expired. On the other hand Weller's term was to expire in March, 1857, and the term of his successor would commence at that time. Weller's successor would therefore hold two years longer than Gwin's; and under the circumstances, being able to dictate such terms as he pleased, Broderick now demanded the succession to Weller or the full six years' term, instead of the succession to Gwin for only four years.

The regular course would have been for the legislature to elect a successor to Gwin first and then a successor to Weller. But this did not suit Broderick's purpose. He wanted to secure his own election and then name his colleague. He knew that the election for the long term first would be an irregularity; but he cared nothing for irregularity. He preferred a course which

would exhibit original power. He wanted to be Cæsar and he became Cæsar. When the legislature met, upon counting his direct supporters or men who were devoted to him first and last, he found that he lacked two of a majority. These he had to gain from the supporters of either Weller, Gwin or Latham, all of whom were candidates. He appears to have first proposed to support Weller for Gwin's place, if Weller's friends would give him the required votes; but they refused on the ground that Weller was entitled to succeed himself. He then arranged with the friends of Latham, at that time United States collector of customs at San Francisco, that in consideration of the required votes, Latham should have Gwin's place. And it was on this understanding that the Democratic senatorial caucus of 1857, which met on January 8, resolved that the long term should be first filled and that Broderick should be elected. An attempt was then made to agree upon a candidate to fill the short term and several ballots were taken, but without success; and the caucus election was then postponed until the next evening. In accordance with the understanding, when the houses met in joint convention on January 9, Charles Westmoreland moved to elect for the long term first. Assemblyman John H. McKune moved to vote for both terms at one and the same time. Lieutenant-governor Anderson, who was president of the convention, ruled that both motions were out of order and that the short term would have to be filled first. Westmoreland appealed from this decision and the appeal was sustained by a vote of sixty-six to twenty-six. McKune's motion was then lost and Westmoreland's adopted.¹

Nominations for the long term being then in order, Frank Tilford nominated Broderick, Maurice C. Blake nominated Edward Stanly as Republican candidate, and Jesse O. Goodwin nominated James W. Coffroth as Know Nothing candidate. There were one hundred and twelve votes, of which fifty-seven were necessary for a choice. Broderick received seventy-nine, Coffroth seventeen, and Stanly fourteen. Broderick was then declared elected United States senator for the term of six years commencing March 4, 1857. His commission was delivered to him next day. He had

¹ Senate Journal, 1857, 86, 87; O'Meara, 151-154.

thus reached the position for which he had been struggling so many years. The fight he had made was a remarkable one. From the time he had conceived the idea of becoming United States senator, he had pursued his purpose with indefatigable vigor. Repeated defeat could not turn him from it. He spent his own money and the money of his friends to accomplish it. He had succeeded; and he exulted in his victory. Never before had there been such a struggle, nor has there been since. It was unique. It stands alone in the history of contests for the United States senatorship on the Pacific coast—and for that matter in the Union.¹

Almost from the moment that Broderick had thus reached a commanding position, he manifested his imperious disposition. He was determined to be dictator and would brook no opposition to his will. He had almost from the beginning of his political career voted against slavery and the slave power; but in other respects he had shown no broad-minded or enlightened statesmanship. He thought of little but his own elevation. He stuck with extraordinary sincerity and persistence to his friends; but he had enemies to punish and he took delight in "pulling out their claws" as he termed it. He had risen with the help of the friends of Latham; and it was supposed that the election of Latham as Gwin's successor was thereby assured; and with most men it would have been assured. But Broderick did not want a colleague who would not be subservient to his beck and control. He therefore took his own time to make up his mind who among the aspirants would suit him best, and, to all appearance, he enjoyed keeping them upon the rack and having them look upon himself and himself alone as the master in whose hands their fate reposed.

Gwin and Latham were the leading candidates for the second place; but there were several other aspirants, among whom were Joseph W. McCorkle and Alexander P. Crittenden. Either of the last-named would have suited Broderick better than Latham or Gwin; but neither had sufficient strength, even with Broderick's aid, to make a successful fight; and the contest was soon narrowed down to the leading candidates. In the caucus of

¹ Assembly Journal, 1857, 98, 99; O'Meara, 154-157.

January 8, on the first ballot for the short term, Gwin had received twenty-six votes; Latham, twenty-one; McCorkle, fifteen, and Crittenden, two; and on the second ballot, Gwin twenty-five; Latham twenty-four, and McCorkle fifteen. On the evening of Friday, January 9, when the caucus met again, four ballots were taken with a slight gain for Gwin; but nothing decisive. It did not yet suit Broderick to name his colleague. On Saturday, January 10, the excitement about the matter among the politicians at Sacramento was worked up to fever heat. It appears that in the bargaining that had taken place between Broderick and Latham or their friends, Senator Frank Tilford, a friend of Broderick, had been promised Latham's support for the office of collector of customs at San Francisco; and the promise was given in a letter to him signed by Latham. This letter Tilford suddenly discovered to be missing; and he charged that it had been abstracted from his desk either by Latham or some one of his supporters in order to destroy the evidence of the pledge and evade its fulfillment. Whatever may have been the truth in reference to Latham's connection with the affair, Tilford's complaint and violent denunciations contributed to a very large extent in injuring Latham's prospects, which were still regarded as nearly certain, and to break down a support that could not again be rallied to Latham's side. On the other hand it began to be whispered around that Latham, while collector of San Francisco in 1856 and in control of the revenue-cutter in that port, had not only not made use of it against the vigilance committee but had agreed with the leaders of the committee that they should not be interfered with by it in their deportation of exiles by sea. It was further urged against Latham that he had allowed his brother to serve as an officer in the vigilance committee and at the same time retain an office in the custom-house—and this of itself, it was urged by Latham's opponents, was enough to show him not a good Democrat and certainly not a good friend to Broderick and Broderick's friends.¹

Latham was still strong, notwithstanding the charges against him. Tilford was without any very great difficulty placated; and the vigilance committee objection was regarded as rather

¹ O'Meara, 158-172.

thin. But Latham's main strength lay in the almost insuperable dislike of most of Broderick's friends to Gwin. There were, however, two other large obstacles in Latham's way. In the first place Weller's friends were determined to defeat him on the ground that he had by his bargaining contributed to Weller's overthrow; and in the second place he had not manifested due subserviency to the master of the situation. It was doubtless for the latter reason especially that for several days further no decision was arrived at. On Saturday evening, January 10, the caucus met again and took five more ballots, making eleven in all, with little or no change from the former vote, except another slight gain for Gwin. The caucus then adjourned until Monday evening. In the meanwhile the excitement had increased and continued to increase in intensity. Sunday was a day of feverish anxiety. But in the middle of the night between Sunday and Monday an event took place that virtually settled the controversy and suited well the dark and devious ways by which it was accomplished. Perhaps nothing can be wondered at in the conduct of politicians; and no good ground can exist for surprise at any action they deem for their advantage. But notwithstanding all this, what now actually took place would seem almost incredible if it were not well authenticated. In the middle of the night referred to, Gwin, habited in a long, dark robe, stealthily and secretly made his way from his own lodgings in the Orleans Hotel, through a dark and narrow alley, across a main street and along another alley to the rear of the Magnolia House, where Broderick had his apartments. He was accompanied by a single companion. At the Magnolia they were expected and admitted by one of Broderick's henchmen. Being directed up stairs, they proceeded to the second floor and were received by Broderick, who was waiting for them. In a few minutes Broderick and Gwin were left alone; and a bargain was hastily patched up between them, by the terms of which Gwin agreed to give up all his right to patronage and appointments on the Pacific coast in consideration of Broderick's securing him the election over Latham. The work of the night being done and the evidence of the compact put in writing and securely placed

in Broderick's possession, Gwin made his way back to his own lodgings as stealthily and secretly as he had left them.¹

It was still necessary to be extremely cautious. If what had taken place were known, there could be no telling what the result might be. It might be as disastrous to Broderick himself as to Gwin; and one side had therefore to be as circumspect as the other. It was strange that Gwin should have so humbled himself; but it was still stranger that Broderick should have allowed himself to be entrapped into a bargain with an adversary, who had so humbled himself. For the time being it may have been sweet for Broderick to triumph in the humiliation of his opponent and to hold in his possession the proofs of his abasement. But the abasement was quite as much Broderick's as Gwin's; and in the end it turned out to be much more Broderick's than Gwin's. For the time, however, nobody, except the participants and a few confidants, knew anything about the compact; and the struggle went on apparently as before. On Monday evening the caucus met again and three ballots were taken. The first and second of the evening, or the twelfth and thirteenth on the full count, were about the same as the eleventh. But in the meanwhile instructions had been issued from headquarters; and on the fourteenth many changes took place. In a number of cases attempts were made to explain the changes; but they were all hypocritical and based on falsehood. Everybody knew the reason of the change and that it was a reason which could not be avowed. As it was, forty votes were necessary to a nomination; and on the final count Gwin received forty-seven to twenty-six for Latham and six for McCorkle. Upon the announcement of the vote, the caucus adjourned *sine die*.²

The next day the legislature met again in joint convention to elect a United States senator for the short term. James W. Mandeville nominated Gwin; James W. Coffroth nominated Henry A. Crabb, and Richard Chenery, Aaron A. Sargent. The vote resulted in eighty-two for Gwin, seventeen for Crabb, and eleven for Sargent; and Gwin was thereupon declared elected

¹O'Meara, 172, 179.

²O'Meara, 179-182.

as his own successor for six years commencing on March 4, 1855, or four years from March 4, 1857. Hardly, however, had the vote been thrown before the cries of "bargain and corruption" began to be heard on all sides. Few knew the real facts; but everybody could scent rottenness. The *State Journal*, Broderick's organ in Sacramento, edited by Benjamin B. Redding, came out boasting that the wings of the Democratic party had been at length harmonized and denouncing in the most violent language the "selfish and unscrupulous spoils-hunters," who wanted the old distracting quarrel to continue so as to enable them to steal into office and rob the Democracy of empire. At the same time Gwin published an address to the people of California, purporting to state "certain circumstances and facts" in reference to the contest which had just resulted in the election of Broderick and himself.¹

Gwin said, in his address, that he had found himself, at the expiration of his first term, after a laborious service and after having outlived as he supposed the misrepresentations of his enemies, engaged in a new struggle and that his second election had been attended by circumstances that rarely accompanied such contests. It had been his evil destiny, as it was the destiny of every representative that had occupied his position, to be the indirect dispenser of federal patronage; and every dispenser of patronage strangely miscalculated if he expected to evade the malice of disappointed men. But he believed he could say for himself that the hostility, malignity and abuse, which had pursued his senatorial career and which had accompanied him during the strife just closed, were such as no other representative had ever endured and survived. The opposition he had sustained had come from an unexpected quarter or from persons whose friendship, he had thought, strengthened as it was by personal obligation, nothing could weaken or sever. Ardent, devoted and disinterested friends he had, whose fidelity remained unshaken from first to last. But their attachment, faithful and zealous as it was, would have proved unavailing, if unaided, to meet and conquer the opposition which open hostility and secret treachery had arrayed against him. He

¹ *Assembly Journal*, 1857, 106, 107; O'Meara, 183, 184.

had learned in the struggle that "he who aids in conferring great official power upon individuals does not always secure friends and that the force of deep personal obligation may even be converted into an incentive to hostility and hate." In a word, it was to the federal patronage he had dispensed in California that he attributed, in a great degree at least, "the malice and hostile energy, which, after years of faithful public service and towards the closing period of life," had nearly cost him the indorsement of a re-election. From patronage, therefore, and the curse it entailed, he said he should in future gladly turn, and his sole labor and ambition should thenceforth be to deserve well of the state and to justify the choice of the legislature in honoring him a second time as a representative of its interests. He then referred to the assistance rendered him by Broderick and his friends. "Although at one time a rival," he continued, "and recognizing in him ever a firm but manly opponent, I do not hesitate to acknowledge in this public manner his forgetfulness of all grounds of dissension and hostility in what he considered a step necessary to allay the strifes and discords which had distracted the party and the state. To him and to the attachment of his friends to him, I conceive, in a great degree, my election is due; and I feel bound to him and them in common efforts to unite and heal where the result heretofore has been to break down and destroy."¹

As was to have been expected, this address was regarded with surprise by nearly everybody and with humiliation and anger by a large number of Gwin's supporters. It was believed to mean a great deal more than it said; and rumors of Gwin's self-abasement became rife, though nothing could be proved. It was of itself, perhaps, abject enough; but it was supposed to indicate a still lower depth of degradation than appeared on the surface. Gwin had left Sacramento for San Francisco on the afternoon of Tuesday, January 13, the day of his election and the day on which his address bore date; but before doing so he had invited every senator and assemblyman to attend a collation to take place at his residence in San Francisco on the following Thursday in honor of his election. Some, and

¹ O'Meara, 184, 185.

particularly those who had most strenuously opposed him, abstained from the banquet; but it was nevertheless largely attended; and it passed off with pretended, if not real, jubilation. As for Broderick, his return to San Francisco, after his great victory, was the occasion of what might be called a public triumph. He came like a conqueror, swelling with the apparent influence he wielded and the seeming patronage he controlled, exulting over his prostrate adversaries and above all over his conspicuous colleague, whom he had forced to demean himself to such an extent as forever to preclude anything like genuine gratitude or cordiality. Such feelings could not, perhaps, have been felt by Gwin towards Broderick in any case; but whether so or not, it was certain that he could not, and under the circumstances could not be expected to, feel them toward the man who had made him cringe at his feet.¹

It was not long before Broderick found out the mistake he had made and began to reap the whirlwind he had sown. He and Gwin started for Washington by the Panama route late in January and reached New York towards the end of February. There Broderick was received by his old acquaintances with even greater honor than had been tendered him in San Francisco; and everybody seemed disposed to pay him respect. But it was in Washington, to which place he hastened on so as to take his seat on the approaching March 4, that he created the most sensation. Rumors of the peculiar circumstances which had attended the senatorial contest in California had preceded him; and exaggeration had so magnified his importance and power that he was regarded on every side with wondering admiration, while Gwin was viewed with looks askance. The latter had immediately upon his arrival taken his seat; but even his former warm southern friends, though they did not know the depth to which he had descended, felt that he had compromised himself; while on the other hand many of them as well as men of other parties felt attracted by what they regarded as the commanding genius of Broderick and showed him attentions that were not often manifested towards new men. Broderick in fact found himself well known

¹ O'Meara, 183, 185-187.

and generally considered as a man of great promise, evidently destined to occupy a position of the first rank.¹

Possibly Gwin intended to carry out his compact with Broderick. He had so pledged himself in substance in his address to the people; but in addition to this he had, on the Sunday preceding the night in which he prostrated himself at Broderick's feet, addressed that individual a letter in which he made an absolute and unequivocal promise to the same effect. In that letter, usually known in those days as the "scarlet letter," which was preserved and afterwards exhibited, he had volunteered to say, "I am likely to be the victim of the unparalleled treachery of those who have been placed in power by my aid and exertion. The most potential portion of the federal patronage is in the hands of those who by every principle that should govern men of honor should be my supporters instead of enemies; and it is being used for my destruction. My participation in the distribution of this patronage has been the source of numberless slanders upon me that have fastened a prejudice in the public mind against me and have created enmities that have been destructive to my happiness and peace of mind for years. It has entailed untold evils upon me; and while in the senate I will not recommend a single individual to appointment to office in the state. Provided I am elected, you shall have the exclusive control of this patronage, so far as I am concerned; and in its distribution I shall only ask that it may be used with magnanimity and not for the advantage of those who have been our mutual enemies and unwearied in their exertions to destroy us. This determination is unalterable; and in making this declaration I do not expect you to support me for that reason or in any way to be governed by it; but as I have been betrayed by those who should have been my friends, I am in a measure powerless myself and depend upon your magnanimity."²

But whatever Gwin may have intended and whatever Broderick may have expected in reference to the patronage of the Pacific coast, or in other words the spoils generally supposed to

¹ O'Meara, 188.

² O'Meara, 212.

belong to the United States senators, neither appears to have taken into account the president of the United States, in whose hands the power of appointment lay. This president was James Buchanan, who had been elected in the autumn of 1856 as a Democrat by a large vote over John C. Fremont, the candidate of the newly formed Republican party, and Millard Fillmore, the candidate of the moribund Know Nothing party. Buchanan was one of those politicians, who were usually called northern men with southern principles. Though he hailed from a free state, he represented and was supported by southern interests. He belonged, body and soul, so to speak, to the south and was ever ready to do its bidding—as was afterwards shown by the condition to which he had brought, and in which he left, the country at the end of his term when the civil war broke out. In California Buchanan had been a popular candidate for the presidency, supported alike by all the factions of the Democratic party—Broderick as well as Gwin, tammany as well as chivalry—and he had received, as shown before, a very large plurality over both his opponents, Fillmore and Fremont. He was inaugurated on March 4, 1857, at the same time that Broderick took his seat; and it was said and supposed at first that he was well disposed towards Broderick and would favor him in the dispensation of the patronage. For a while everything looked bright and Broderick and his friends were in high feather. But Buchanan was a cautious man, averse to taking any more responsibility than he could help; and he required as an inexorable rule that the names of applicants for important offices should be presented in writing and indorsed by the senator or representative recommending the appointment.¹

This did not suit Broderick. He had probably made too many promises. Whether he had or not, he refused to make any written applications. The most important of the offices was that of collector of the port of San Francisco. It was perfectly well known that Frank Tilford, who was Broderick's principal friend in the Californian senate, was a candidate for this office; and it was supposed that he would obtain the office as a matter of course. He was not only looked upon as Broderick's candi-

¹ O'Meara, 188, 189.

date; but he had obtained from Latham in the course of his contest for the United States senate a written pledge of that gentleman's support and recommendation; and not only did he have this promise but Latham, after his defeat for the United States senate, actually sent on his resignation of the office of collector, which he then filled, to Washington and asked that Tilford might be appointed in his place. Tilford and his friends felt so certain of his appointment that it was not considered necessary for him to go to Washington and he therefore remained at his desk in the Californian senate, well satisfied with the outlook of affairs and biding the time when he could fill subordinate places for himself. But Buchanan or rather the clique of southern politicians, who ran him, thought and determined otherwise. It is not likely that it would have been very different even if Broderick had made written application and entirely covered the back of his application with indorsements. It is true that Gwin also declined to make any written application or openly to present any recommendation. But there were many other ways of influencing and even securing appointments from such a man as Buchanan, surrounded and managed as he was, than publicly asking for them or following the formulas he had prescribed; and Broderick soon found out that his wishes, though well known, were not to be regarded and that, to add bitterness to his disappointment, everything done, though not avowedly asked for by Gwin, was done in Gwin's favor. Instead of Tilford getting the collectorship or even Bigler, who was also a candidate, the prize went to Benjamin F. Washington, and Tilford had to be satisfied with the lower position of naval officer and Bigler with that of minister to Chili. The other offices in general went to friends of Gwin or at any rate to persons who were not friends of Broderick.¹

The result, as was to be expected by those who knew Broderick's imperious nature, was a violent quarrel between him and the president and a harsh and vehement denunciation of the latter by the former from his place in the United States senate. Broderick's next move was to rush off to New York and patch up a truce with George Wilkes, then editor of a newspaper in

¹ O'Meara, 189-194.

that city, with whom he had quarreled in 1854. On that occasion, which was very soon after the death of Alexander Wells, one of the justices of the supreme court, Wilkes had succeeded, without Broderick's knowledge, in obtaining from Governor Bigler a commission to fill the vacant office. But Broderick had already promised this appointment to Charles H. Bryan and, when he learned that Wilkes had surreptitiously, as it were, obtained it, his anger knew no bounds and for a while he raged and stormed with the fury of a hurricane. The result was that Wilkes, who though possessed of very superior talents of a kind was cowed before Broderick's tremendous wrath, tore up or returned his commission to Bigler and, shaking the dust of California from his feet, went off to the more congenial atmosphere of New York; while Bigler made his peace with Broderick by issuing a new commission to Bryan in accordance with Broderick's wishes. From that time Wilkes had pursued his own course in New York, without connection with Broderick; but now Broderick needed him again and, as is said, again placed himself in the hands of that astute manipulator. However this may have been, it is certain that in a very short time Broderick was involved in an uncompromising war with the administration; and, in so far and in proportion as the administration of Buchanan was weak and in its subserviency to slavery despicable, Broderick rose in public estimation. In the tremendous interests at stake, whether he received his cue from Wilkes or evolved it out of his own passionate nature, he developed an ability as a terse and powerful orator and wielded an influence as such which was alike unexpected and in certain directions almost unlimited in effect.¹

After the adjournment of congress Broderick returned to California. His failure to secure the federal patronage had cooled the fervor of a number of his supporters who had reckoned upon lucrative or desirable positions; but there were others who believed in his eventual success and rallied around him. Though he had attacked and reviled the president and the power of the president was made use of to strengthen the opposition against him, he managed not only to retain his special friends but, by

¹ O'Meara, 116-118, 190-195.

very great political ability and adroitness, to attract and organize a large following of adherents, who were entirely devoted to his interests and whose faith and fidelity nothing could shake or disturb. He knew that he could not place himself in direct opposition to the Democratic party and that it would not do for him to be understood as waging war against the Democratic administration. He denounced reports to that effect as maliciously false. But it was perfectly well understood that he was not in accord with the Buchanan administration; and, as public affairs in the hands of Buchanan were fast drifting into the civil conflict that followed, the attention and sympathy of others besides personal friends became attracted towards Broderick; and he began to loom up as a very large and important factor—and plainly an anti-slavery and so far forth an anti-Democratic factor—in the inevitable struggle that was approaching. There is no telling what position he might have reached and occupied and what influence he might have wielded in the course of the next few years, and particularly when the war of secession in the interest of slavery finally broke out, if his career had not been cut short by an untimely death; but there can be no doubt that he would have been on the side of the Union and that he would have been very prominent—perhaps amongst the most prominent.

As matters stood, however, Broderick had to be a victim. The slavery power or chivalry element was still dominant; and its whole force was used to thwart and crush him and the Democratic anti-slavery sentiment which he represented. All the offices were filled with chivalry men. The custom-house at San Francisco, more than ever, got to be called the "Virginia poor-house" on account of the southern appointments with which it was filled. The entire federal patronage, which was now anti-Broderick, was made to bear upon the next state election, so as to make the state patronage also anti-Broderick. Weller, who though a northern man was as much a pro-slavery man as Buchanan himself, had returned to California and was put up for the office of governor as an open and avowed enemy and opponent of Broderick. The state convention for the year 1857 met at Sacramento on July 14; and the result of the balloting was overwhelmingly for Weller, who received two hundred and

fifty-four votes against sixty-one for McCorkle, the Broderick candidate. The Republicans nominated Edward Stanly and the Know Nothings George W. Bowie. At the election which followed in September, eighty-six thousand four hundred and forty votes were thrown, of which Weller received over forty-nine thousand, Stanly nearly twenty thousand and Bowie nearly eighteen thousand.¹ The result was to all appearance a complete anti-Broderick triumph. But though thus apparently defeated, Broderick was perhaps stronger than ever; and he now, more than ever before, began to manifest the wonderful personal force that was in him and distinguished him as far superior to any other politician or public man in the state.

In the congress that commenced in December, 1857, the slavery question, which had been agitating the country for so many years and in so many different forms growing more and more serious and threatening every year, came up again on an application for the admission of Kansas as a state. That portion of the country, which began to attract attention soon after the admission of California, was erected into a territory in 1854. One and perhaps the most important provision of the territorial act was the so-called "squatter sovereignty" clause inserted by Stephen A. Douglas, United States senator from Illinois and chairman of the senate committee on territories, by the terms of which the question of slavery was to be determined by a vote of the citizens. The result was an extensive immigration into the new territory from both the free and the slave states—one party being in favor of freedom and the other of slavery—and consequent election and other disturbances which excited rancor on every side and kept the entire Union from one end to the other in constant ferment. What was popularly known as "border ruffianism" became so prevalent and violent that United States troops had to be called on to quell it and preserve the peace. As matters developed, two territorial legislatures were chosen, one composed of anti-slavery men and the other of pro-slavery men. The former met in January, 1857, but was dispersed by the United States marshal. Soon afterwards the latter convened and provided for a constitutional convention, which met in the

¹ Senate Journal, 1858, 11, 12.

following September at Lecompton and framed a pro-slavery constitution. The anti-slavery men did not participate in the election for delegates to the Lecompton convention for the reason that they claimed that the legislature which had called it was an illegal body. On December 21, 1857, the constitution so adopted at Lecompton was submitted to vote and, on account of the refusal of the anti-slavery men to participate in the election, it was carried by a vote of upwards of six thousand in favor to less than six hundred against it. In the meanwhile a new election for a territorial legislature had taken place in October, 1857, at which there had been a very general and largely preponderating anti-slavery vote; and the result was the choice of a decidedly anti-slavery legislature. One of the first acts of this new legislature was to re-submit the Lecompton constitution to popular vote. This second election, in which the pro-slavery men refused to participate, took place on January 4, 1858, and resulted in an overwhelming rejection of it.¹

The application for the admission of Kansas as a state, which came up in the congress of 1857-8, above referred to, was with the Lecompton or pro-slavery constitution. Buchanan in his annual and also in a special message not only favored that constitution, which would have made Kansas a slave state, and the consequent enlargement of slave territory; but he urged and almost implored congress to accept and ratify it. Douglas took strong ground against it and therefore against Buchanan. The question involved was a vital one and produced an irreconcilable and fatal split in the Democratic party. Those who favored slavery and those who were willing to cringe to the slave power for the sake of office or influence took sides with Buchanan; while those who were anti-slavery and bold enough to stand up for their convictions either left the Democratic party altogether or took sides with Douglas against the administration. There were men of all sorts in congress. The senate passed the Kansas bill with the Lecompton constitution; but the house of representatives refused to concur and adopted a substitute requiring a re-submission to the people of Kansas. This substitute the senate rejected; but finally a new bill was adopted by both

¹ Davis' Political Conventions, 85, 86.

houses, which indirectly but in fact required a new vote and thus accomplished the purpose of the house substitute. Under this bill, which brought out a full vote, the Lecompton constitution was submitted to the people of Kansas for the third time; and it was rejected by an overwhelming and decisive majority.

Broderick, up to this memorable session of 1857-8 had always been opposed to Douglas. This was not, however, because Douglas had been against slavery, but on the contrary because he had been in favor of it. Broderick had strenuously opposed the fugitive slave bill and denounced Douglas for his advocacy of it. He had in 1854 applauded state senator Charles H. Bryan's characterization of Douglas as a "northern dough-face and political charlatan;" and he had uniformly opposed Douglas' candidacy for the presidency. But in 1857, when Douglas changed front and commenced his great fight against slavery and the Buchanan administration as its advocate, Broderick joined him and became one of his strongest and most important supporters. Gwin of course went with Buchanan. The Californian representatives, who had been elected in 1856, were Joseph C. McKibben and Charles L. Scott. The former went with Broderick in opposition to the policy of the president on the Kansas question, while the latter sided with Gwin. It did not take long for the lines of the great and as it proved irremediable split to sharply define themselves. Gwin paid court to Scott, with whom he had been unfriendly on account of the latter's advocacy of Latham for Gwin's place; and the two, having joined hands on the side of Buchanan, thenceforward assumed and controlled the dispensation of the federal patronage in California, while Broderick and McKibben loomed up as growing figures in the coming-on changes that were rapidly evolving.¹

Kansas and the Lecompton constitution gave congress enough to do for a couple of years. In 1859, after the adjournment, Broderick and McKibben returned to California for the purpose of rallying the state to the anti-Lecompton standard; while Gwin and Scott came to win it to the support of Lecompton and the administration. Already in 1858 the two wings of the Democratic party had met in separate conventions and run separate

¹ O'Meara, 202, 203.

tickets for subordinate offices; but in 1859 a new governor, congressmen and nearly all the legislature, besides other officers, were to be elected, and the result was regarded as of great importance. The fight was commenced by a great anti-Lecompton mass-meeting at San Francisco in May, at which McKibben spoke; and it was followed by many others in different parts of the state, encouraged by the success of the anti-Lecompton ticket in municipal elections in Stockton, Marysville, Nevada, Santa Cruz and other places. There was now very little in fact to divide the anti-Lecompton men from the new Republican party, for the reason that the main and almost the only political question of importance pending was that of slavery; and upon that the anti-Lecompton party and the Republicans were in accord. An attempt was made to form a junction and unite in a common fight against the administration and its slavery sentiments. But the attempt failed, and each party nominated a distinct ticket. The Republican convention met at Sacramento on June 8, 1859, and nominated Leland Stanford for governor. The anti-Lecompton convention met on June 15 and, upon the dictation of Broderick, nominated John Currey for governor. The Lecompton convention convened on June 22 and nominated Milton S. Latham for governor and John G. Downey for lieutenant-governor.¹

At the end of July, 1859, Horace Greeley, the editor of the New York Tribune, who was looked upon as one of the most prominent Republicans in the United States, arrived in California on a visit overland. He was given an enthusiastic reception wherever he appeared and especially by the opponents to the administration. The honors paid him were to some extent at least regarded as indicative of the feeling of the country against the Lecompton party; and Greeley, regarding himself as entitled to speak as an adviser, if not as an oracle, repeated again the counsel, which had been previously rejected, for the Republicans to unite with the anti-Lecompton Democrats. Soon afterwards Stanford was asked to withdraw in favor of Currey; but he maintained that it was the duty of the Republican party under any and all circumstances and whatever might be the result to stand by its colors; and on his advice there was no yielding. It was

¹ Davis' Political Conventions; 86-106; O'Meara, 203-205.

doubtful whether the anti-Lecompton and Republican parties together could as yet prevail against the pro-slavery Democracy, for which people had been blindly voting for so long, and especially when backed by the whole power of the administration; but it was very certain that neither alone could do so; and, when the Republicans thus refused notwithstanding the counsel of Greeley or anybody else to relinquish their separate and independent standing, it was evident that they were looking not for present success but for future position; and there can be no doubt that they acted wisely. They nevertheless indorsed the course of Broderick and McKibben in congress; and a few of their candidates withdrew in favor of anti-Lecompton Democrats. But the party as a party stood firm; and as a result each party made its own separate fight.¹

There was not before, nor has there been since, in California, a more acrimonious or exciting campaign than that of 1859. The most remarkable thing about it was that Broderick himself took the stump. He had never attempted stump speaking or been trained for it; nor was it known that he could make a stump speech. When it was announced that he would canvass the state, his opponents raised a shout of derision. They represented him as a man of low and vulgar instincts, rowdy character and ungovernable temper. It was asserted that he was incapable of composing or delivering a single direct, perspicuous and grammatical sentence; they prophesied his absolute failure, and they laughed in anticipation of the sorry spectacle he would present. Even some of his most intimate friends trembled for his success. But neither of them knew the man. He was so earnest, so worked up in what he had to say, that he never thought about oratory; but poured out his soul in a powerful, unimpeded and irresistible stream of eloquence. His main subject was the despicable conduct of Gwin; and never perhaps was a man so unmercifully lashed or covered to such depth with vituperation and denunciation for ingratitude, duplicity, perfidy and utter untruthfulness as was the man for whom he had done so much and who repaid him so ungenerously. Nor did he spare Latham, whom he charged with debasing himself nearly as much as Gwin,

¹ Davis' Political Conventions, 107, 108.

or Tilford, who had surrendered and gone over entirely to the enemy. Both Gwin and Latham made pretensions to oratory, and they both attempted to deny Broderick's charges and to answer him; but what they said, compared to his anathemas, was like puny currents compared to an overwhelming and irresistible torrent of wrath and invective. He made many speeches in different parts of the state, including Placerville, Yreka, Shasta, Quincy, Santa Rosa and Sacramento; and everywhere he astonished his hearers with his extraordinary and unexpected command of the most powerful and effective Anglo-Saxon diction.¹

It was said, and perhaps with some truth, that a certain so-called fire-eating element of the Lecompton, chivalry or slavery party determined that such a man should not live. He was too dangerous. The possibilities for him in the future were too great. He must be got rid of in some way or other; and the usual method, except in the case of a man who could not be managed otherwise, was not exactly what was recognized as murder or assassination but differed from them very little in reality. The plan was to involve the intended victim in a quarrel and force him, by the strength of an almost irresistible public opinion, into a duel in which he could be, and was very certain to be, killed. There was of course always a pretense of fairness in the duels that have taken place in California, as there is always a pretense of fairness in a gambling game; but it is very doubtful whether there ever was a fair duel any more than a fair gamble. They have at least always, or very nearly always, resulted in favor of the fire-eating class; and the natural deduction is that they have been more or less managed and manipulated according to pre-arranged plans. It was expected that Gwin or some other of those who had been so terribly excoriated would be the one to call Broderick out; and it was known that he would answer. He had in 1852 fought a duel with Caleb B. Smith, occasioned by offensive language used by him towards Smith's father, and was only saved on that occasion by the ball from Smith's pistol striking a watch in his fob-pocket and glancing off. He had also recognized the code by promoting a duel at San Francisco in 1852 between city alderman John Cotter and

¹ Davis' Political Conventions, 108; O'Meara, 205-213.

John Nugent, editor of the San Francisco Herald newspaper, for charges of corruption in reference to the purchase of the Jenny Lind theater for a city hall, in which scheme Broderick had taken an active part, and also another duel in 1854 between Charles A. Washburn, editor of the Alta California newspaper, and Benjamin F. Washington for galling personal strictures made against the latter by the former at Broderick's inspiration. Gwin had also fought a duel with Joseph W. McCorkle and recognized the code—in fine as a southerner and in public life he could not do otherwise than submit himself to the general customs of his associates. But it was from an entirely different quarter that the demand, or at least the first demand, upon Broderick was to come.¹

David S. Terry, chief justice of the supreme court and the same who in 1856 had driven his bowie-knife into the neck of Sterling A. Hopkins and come near paying for it with his own neck at the hands of the vigilance committee, had been a candidate in the Lecompton Democratic state convention in June, 1859, for renomination to the supreme bench. As a candidate he had been invited before the convention to define his position; and he had taken occasion to characterize the anti-Lecompton party as "a miserable remnant of a faction sailing under false colors, trying to obtain votes under false pretenses. They have no distinction they are entitled to. They are the followers of one man, the personal chattels of a single individual, whom they are ashamed of. They belong, heart and soul, body and breeches, to David C. Broderick. They are yet ashamed to acknowledge their master and are calling themselves, forsooth, Douglas Democrats, when it is known—well known to them as to us—that the gallant senator from Illinois, whose voice has always been heard in the advocacy of Democratic principles—who now is not disunited from the Democratic party—has no affiliation with them, no feeling in common with them. Perhaps, Mr. President and gentlemen, I am mistaken in describing their right to claim Douglas as their leader. Perhaps they do sail under the flag of Douglas; but it is the banner of the black Douglass, whose name is Frederick—not Stephen." A few days afterwards, June 26,

¹ O'Meara, 215-218.

while at the breakfast table of the International Hotel in San Francisco—at which sat, besides himself, Abia A. Selover and his wife and several other persons, including an attorney of British birth named Duncan W. Perley, formerly of Stockton and intimate with Terry—Broderick exclaimed, addressing Perley, “I see your friend Terry has been abusing me at Sacramento.” Perley asked what he meant, when Broderick replied: “The miserable wretch, after being kicked out of the convention, went down there and made a speech abusing me. I have defended him at times when all others deserted him. I paid and supported three newspapers to defend him during the vigilance committee days; and this is all the gratitude I get from the miserable wretch for the favors I have conferred on him. I have hitherto spoken of him as an honest man—as the only honest man on the bench of a miserable, corrupt supreme court; but now I find I was mistaken. I take it all back. He is just as bad as the others.”¹

Perley asked, “Mr. Broderick, who is it you speak of as a ‘wretch’?” Broderick replied, “Terry.” Perley said he would inform Terry of the language used about him. Broderick retorted, “Do so; I wish you to do so; I am responsible for it.” Perley rejoined, “You would not dare to use this language to *him*.” Broderick’s only response was a sneering repetition of Perley’s words, “would not dare?” At this Perley, who thought he saw an opportunity of placing himself in a position of great prominence by taking up the Terry and especially the chivalry fight against Broderick, professing to be highly incensed with Broderick’s sneer, exclaimed, “No sir, you would not dare to do it and you know you would not dare to do it; and you shall not use it to me concerning him. I shall hold you personally responsible for the language of insult and menace you have used.” Perley immediately went off to hunt up a friend who would consent to represent him in carrying a challenge to Broderick. Several declined; but he finally prevailed upon Samuel H. Brooks to bear his message, at the same time stating that subsequent proceedings on his part would be conducted by E. J. C. Kewen, then temporarily absent. To this Broderick replied, in an exceedingly caustic letter, to the effect that he

¹ O’Meara, 218-220.

could not accept a challenge from Perley, for the reason among others of difference in relative position between them—Perley having shortly before made oath that he was a subject of Great Britain, so that, not being a citizen of the United States, the giving or accepting of a challenge could not affect his political rights. "For many years," continued Broderick, "and up to the time of my elevation to the position I now occupy, it was well known that I would not have avoided any issue of the character proposed." And again he said, "If compelled to accept a challenge, it could only be with a gentleman holding a position equally elevated and responsible; and there are no circumstances which could induce me even to do this during the pendency of the present canvass."¹

The election took place on Wednesday, September 7. The Lecompton or administration party carried the state by a heavy majority and elected their entire ticket. The anti-Lecompton and Republican parties were totally routed. It looked as if the slave power were entirely triumphant; and that there was no use any longer trying to stem its advance. But as a matter of fact this was its last victory in the state; for before another election came on the civil war broke out, which wiped it from the face of the land and consigned its advocates and apologists and particularly those of northern birth and education to a political death that knew no resurrection. But notwithstanding the result and apparent destruction of Broderick and his party, the old passion and malignancy engendered in the conflict remained. It seemed to have been determined that if possible Broderick should be put out of the way; and matters had so shaped themselves that it fell to Terry to undertake the job. Broderick himself was of course by no means guiltless. He had provoked a challenge from Terry and could not complain that Terry did not hesitate or delay in sending it. As a matter of fact Terry lost no time. On the very next day after the election, he left his residence in Sacramento and proceeded to Oakland, whence he addressed a hostile message to Broderick and sent it by the hands of Calhoun Benham. Broderick the same day answered, saying that the remarks that had been made by him might be the subject of

¹ O'Meara, 220-222.

future misrepresentation and he desired Terry to designate those that he regarded as offensive. Terry the next day replied that the precise terms were not important; but what he complained of was language reflecting on his personal and official integrity and particularly what had been said about his honesty on the supreme bench. Broderick rejoined on the evening of the same day, saying that his remarks were occasioned by offensive allusions to himself made by Terry at Sacramento. He admitted that under the provocation referred to he had said of Terry substantially what had been attributed to him; and he added that Terry was the best judge as to whether the language afforded any good ground of offense. Terry at once sent back word that Broderick's answer left him no other alternative but to demand the satisfaction usual among gentlemen, which he accordingly did. In this last note Terry also said that Benham would make the necessary arrangements on his part; and the next morning Broderick named as his friend Joseph C. McKibben.¹

Little or nothing was now left but to prepare for the hostile meeting and bring the parties together. Thomas Hayes of San Francisco, who had been county clerk, was chosen to assist Benham on behalf of Terry and David D. Colton was similarly chosen to assist McKibben on the part of Broderick. As the challenged party, Broderick had the choice of weapons and terms of combat; and his seconds for him chose dueling pistols; the principals to stand ten paces apart, facing each other; the pistols to be held with muzzles vertically downwards; and the words to be, "Gentlemen, are you ready?" and, upon each replying "Ready," the word "Fire" should be given, to be followed by the words "One—two." Neither party was to raise his pistol before the word "Fire," nor to discharge it after the word "two." The place of meeting was to be near a farm-house occupied by William Higgins at the most southerly end of Laguna de la Merced in San Mateo county, and the time half past five o'clock on Monday morning, September 12, 1859. Objections were made by Terry's seconds to the place of meeting and also to the omission of the word "three" after the word "two;" but, upon

¹ O'Meara, 225-232.

these terms being insisted on, the objections were waived. It was said, and it seems likely, that Broderick had been doing considerable practicing at pistol shooting and regarded himself an expert; and there is reason to believe that he and his most intimate friends considered him quite a match for Terry. At the same time some of his friends, as well as some of Terry's, attempted to prevent the meeting; but Broderick's most intimate advisers insisted that the fight had got to come and this was the best opportunity for it; that Broderick was in perfect practice and could hit a ten cent silver piece at ten paces every time; that he was not going to get hurt, and that he would never have a better chance to teach the fire-eating chivalry a lesson, which they much needed, to the effect that he was a man that could not be bullied or backed down. And Broderick seemed to think much in the same way himself and to feel almost perfect confidence in his expertness.¹

However this may have been, there was one thing about which Broderick's seconds do not seem to have exercised proper caution; and this was in reference to the weapons to be used. Terry knew of a pair of dueling pistols, supposed to be of French make, which belonged to Joseph R. Beard. They had been used in duels before and were or could be adjusted with great nicety. They were in the possession of Dr. Daniel Aylette of Stockton; and Terry had borrowed and tried them several times and was familiar with their use. Aylette, who had been selected as Terry's surgeon, brought these pistols along with him from Stockton. Nothing had been determined as to choice of weapons: that was left to be arranged on the ground; but Broderick's seconds also carried along a case of pistols; and by mutual consent a gunsmith of San Francisco, named Lagoarde, successor to one well known as "Natchez" and sometimes called by the same name, was employed as armorer.

An effort had been made to keep the proposed meeting a secret; but it was impossible; and on the early morning of September 12, when it was to take place, a number of spectators appeared on the ground besides the principals and their friends. Among others, Martin J. Burke, chief of police of San Francisco,

¹ O'Meara, 232-236.

who had obtained warrants of arrest from the authorities of San Mateo county as well as from San Francisco, was present; and when the principals stepped forward he advanced and placed them under arrest. They were of course obliged to submit and at once returned to the city, where they forthwith made their appearance before Judge Henry P. Coon of the police court, attended by their respective counsel. An effort was made to show that they had violated the law or intended to violate it, and an attempt was made to compel them to give bonds to keep the peace. But Coon decided that no breach of the peace had been committed and that the testimony was not sufficient to hold them; and he therefore ordered them discharged. Directly afterwards it was arranged that the meeting should come off at the same hour and place the next morning, Tuesday, September 13. Ayletté, supposing the affair stopped for a longer time, had returned to Stockton; but he left Beard's pistols; and Dr. William Hammond was selected to take his place. At the appointed time the parties and their friends again reached the ground. There were about eighty other persons present. Each principal was accompanied by his seconds and a group of friends. Hammond, the surgeon for Terry, after a few words, had thrown his overcoat upon the ground and sat down upon it; while Dr. Ferdinand Loehr, editor of the *California Democrat*, a German anti-Lecompton newspaper of San Francisco, who had been chosen surgeon for Broderick, made his appearance with a large sack of surgical instruments, linen rags and bandages which he dragged after him wherever he went.¹

A few matters, including the important one as to choice of weapons, had been left for determination on the ground; and they were now settled by tossing up a half dollar. Terry won the choice of weapons and of course chose the Beard pistols. Broderick won the choice of ground and the giving of the word. The pistols were examined and the one intended for Broderick was loaded by the armorer, and that intended for Terry by his friend Samuel H. Brooks, while the principals were placed in position fronting each other. It was a raw, cold morning; both wore overcoats, which they now threw off, and appeared

¹O'Meara, 236-238.

in full black suits, their frock coats buttoned across the breast, and without shirt collars. Each had given over to one of his seconds the contents of his pockets; and each was then what was called examined, to see that he wore no armor, by a second of his adversary, and handed his pistol. Each stood erect; Broderick with his black, soft-wool hat drawn down low over his eyes, while Terry had his hat of similar kind thrown back off his forehead; and each, though firm and rigid, showed evident signs of great suppressed excitement—Terry, however, being much cooler than Broderick. The word, as it was to be given by Colton, was then plainly stated, or what in dueling phrase is called exemplified, by him and repeated by Benham. The seconds next stepped back and the principals stood alone, each with his cocked pistol pointing down at his side.

By this time it was nearly seven o'clock. Colton in a clear voice asked, "Gentlemen, are you ready?" Terry replied at once, "Ready;" but Broderick hesitated a moment, adjusting his weapon, and then answered, with a nod to Colton, "Ready." Then came the words, "Fire—one—two." At the word "one," as Broderick was raising his pistol, it went off and the ball struck the ground nine or ten feet in front of him but in a direct line with his antagonist. Before the word "two," Terry fired. There was a slight show of dust upon the right lapel of Broderick's buttoned coat, indicating where Terry's ball had struck. In a moment Broderick involuntarily raised his arms; there was a visible shuddering of the body and then a contraction of the right arm and a relaxation of the muscles of the right hand, from which the pistol dropped to the ground. A violent convulsion of his frame next took place; there was a turn towards the left; his head drooped; his body sank; his left knee gave way, then his right, and he fell half prostrate, his left arm supporting him from falling prone. His seconds and surgeon rushed to his aid. Meanwhile Terry had deliberately folded his arms and stood perfectly still. His seconds went up to him, and he remarked to Benham that he had "hit too far out," meaning that his shot, instead of reaching a vital part, was not fatal. But in a very few minutes, it becoming evident that another shot would not be requested by Broderick's seconds, he hurried off the

ground. He had previously written out a resignation of his office of chief justice of the supreme court, which took effect the day before or September 12, 1859, a few months only before the expiration of his term; and when he retired he proceeded not to Sacramento but to Stockton. He subsequently surrendered himself to answer an indictment for his deed; but the trial or rather pretended trial, which took place in Marin county before James H. Hardy, judge of the sixteenth judicial district, who seemed to have been specially assigned for the case, was so much of a farce as to be an unmitigated disgrace to the state. He was of course acquitted; but he continued to be looked upon by a very large portion of the community as a man with the mark of Cain upon his brow and until his tragic death, which he brought upon himself by his own violence years afterwards, he lived, except among his own particular class, a sort of proscribed and execrated life.¹

Broderick on the other hand, from the moment that he received his wound, was looked upon as a hero. He was not a greater man than before; but he attracted more attention; and, as the anti-slavery sentiment, which he represented, spread and by degrees overshadowed and swept everything else before it, he grew in public estimation greater and greater. It was at first supposed that his hurt was not mortal. Though he had been prostrated and the shock to his system was severe, he soon rallied and conversed calmly and without apparent concern about the consequences with his surgeon, Dr. Loehr, and also with Dr. Hammond, who with general approbation assisted in an examination of his condition. No one appeared to consider at the time that there was much danger. The wounded man was at once conveyed to the residence of his friend, Leonidas Haskell, at Black Point. There on further examination, it was ascertained that his hurt was much more serious than at first supposed. As soon as the facts were known the public agitation became intense. Not since the days in which James King of William lay dying from the effects of the shot of James P. Casey and the whole city crowded, as it were, to read the half-hourly bulletins about his condition, had there been anything like or in any respect

¹O'Meara, 237-241; 14 Cal. 3

similar to it. As on that occasion, there were conflicting and contradictory accounts of the wound and its character and the sufferer's condition; and the very fluctuations of the reports served to keep up and increase the popular excitement. During Wednesday and Thursday there were hopes of his recovery; but on Thursday evening there was a change for the worse and on Friday morning, shortly after nine o'clock, he died, in the fortieth year of his age and the prime and vigor of his life. On the afternoon of the following day a post-mortem examination was held and it was found that Terry's ball had pierced his lungs in such a manner that no mortal power could have saved him. He was buried on the following Sunday from the Union Hotel on Kearny street, where he had long had his lodgings and headquarters. An immense concourse of citizens attended the funeral, which was made a public one. A platform for the occasion had been erected on Portsmouth Square; and from it, in the presence, so to speak, of the whole people, Edward D. Baker delivered one of his most eloquent orations over the remains. The community was profoundly moved. It was reported and, on account of the supposed fitness of the words, it was believed that Broderick shortly before his death had said, "They have killed me because I was opposed to the extension of slavery and a corrupt administration." He was regarded as a martyr. The larger part of the community almost apotheosized him and for years his name was used as a battle-cry of freedom and throughout the civil war, in the struggle against slavery, as a synonym of patriotism and love for the Union.¹

¹O'Meara, 242-254.

CHAPTER IX.

WELLER.

THE Know Nothing or American party, which had come into power in 1855 and was represented, so to speak, by John Neely Johnson, was entirely and totally defeated, as has been stated, at the election of September 2, 1857. In that election, and in the conventions and canvasses that preceded it, little or no attention was paid to the incumbent governor. He had perhaps better not have been regarded at all than to be regarded as he was. He had in various respects, and particularly in everything relating to the vigilance committee of San Francisco, manifested so great a want of discretion and strength that, even when he deserved credit, he received little or none. On the contrary there seemed to be a general disposition to pass him over and ignore him; and, when his term expired, as it could not be said that there had been much if any improvement in the course of it and as many thought there had been a deterioration, no one appeared to regret his retirement or to look back to his administration with either pride or satisfaction. He went out of office on January 8, 1858, as soon as the legislature of that year was organized and John B. Weller was ready to take his place. Before he went out, however, he presented his annual message and made public a number of facts and considerations which were interesting and some of them important.

Among these the first was that at the recent election, and by a decisive vote of the people declared binding and obligatory by the supreme court, the state had been rescued from the necessity of repudiation and consequent disgrace. The financial situation, therefore, was cheering and the effort, so long unsuccessfully made "to pay as we go," had at length been attained. In 1855, the public expenditures had been nearly a million and a half, and

nearly half a million over the receipts; in 1856 a little over a million and nearly one hundred and fifty thousand over receipts; while in 1857 the expenditures were not quite seven hundred thousand dollars and the receipts nearly twelve hundred thousand. The taxable property of the state was worth one hundred and forty millions. Under the recent funding law of April 25, 1857, new state bonds had been authorized to be issued in accordance with the terms of the act and prior to May 1, 1859, to the amount of three million nine hundred thousand dollars, which would more than cover all the indebtedness, including previous bonds, warrants, audited accounts, interest and claims of all kinds, and leave a handsome surplus. On account of this favorable financial showing, Johnson thought the revenue laws needed very little amendment; but, as before, he insisted upon a stamp tax and recommended renewed efforts to induce congress to relinquish the "civil fund." He had been in favor of a constitutional convention; but, as at the recent election there had not been a majority of all the voters expressly in its favor, it could not be called; and he therefore recommended a new attempt. He thought a capitol should be built at Sacramento to cost three hundred thousand dollars. He gave a sort of history of state prison affairs; announced himself opposed to the San Quentin system, and seemed to think that each county should attend to its own convicts. He favored a house of refuge and a good apprentice act. He spoke in favor of requiring druggists as well as physicians to graduate. "There is perhaps no country," he said, "where empiricism is so rife as in this state; and the lives and health of our people are too valuable to be placed at the indiscriminate mercy of arrogant pretenders." He demanded amendments to the attachment, the insolvent, the homestead, the sole-trader and the divorce laws. He laid particular stress upon the divorce law and thought the district attorney should in each case intervene and defend; and he insisted that the adoption of his suggestions "would materially reduce the number of applications and prevent the disreputable uses to which the law has been prostituted." He also demanded a change in the law excluding the testimony of Indians and negroes and said "this indiscriminate prohibition I regard as utterly at variance with the

spirit of our constitution and a wise and judicious governmental policy."¹

After his retirement as governor, Johnson resumed the practice of law, without apparently paying much further attention to politics in California. But early in 1860, when the Nevada mines were attracting great attention and a large emigration from California was pouring over the Sierra Nevada, he joined the throng, removed to the new territory and commenced a new political career. He was elected a member of the first constitutional convention of Nevada in 1863 and became president of the second constitutional convention in 1864. In 1867 he was appointed a justice of the supreme court of Nevada and at the succeeding general election was elected to that office and held until the end of his term at the close of 1870. In 1871, he was appointed by President Grant a visitor and examiner of the West Point military academy; and on August 31, 1872, he died from the effects of what was popularly known as a sun-stroke at Salt Lake City in the forty-eighth year of his age.²

John B. Weller, the successor to Johnson in the office of governor of California, and who as has been seen had been United States senator from California for one full term and defeated for a second one by Broderick, was a native of Ohio. He was born on February 22, 1812, at a place called Montgomery in Hamilton county in that state, but at an early age was removed to the adjoining county of Butler, where he was sent to school and finally attended the college at Oxford, known as Miami University. After leaving that institution of learning, he removed to Hamilton, the county seat of Butler county, where he read law and began to practice; but, instead of devoting himself to the constant and laborious work required to become very eminent as a lawyer, he switched off into a career, more congenial to his nature, and became a politician and stump-speaker on the Democratic side. He had considerable talent, an easy command of language, a good presence and an agreeable voice; and, devoting himself with assiduity to the business of rising in the world, he advanced rapidly, was made district attorney, got to be a politi-

¹ Senate Journal, 1858, 17-33.

² Davis' Political Conventions, 598.

cal leader and at length, in 1838, at the early age of twenty-six, was sent to congress and was twice re-elected to the same office. At the breaking out of the Mexican war he entered the volunteer service as a private and rose to be a colonel. In 1849 he was appointed by President Polk a commissioner to run the boundary line between the United States and Mexico; and that business brought him to California, where he resumed his profession of politician and soon found a favorable field for his stump-speaking qualities and ultra Democratic doctrines. In 1852, as has already been seen, he was elected United States senator in place of Fremont and he continued in that office for the full term of six years, and for two years of the time was sole senator from California. As a United States senator he can not be said to have made any very great figure or accomplished anything of very great importance; but his defeat for re-election and the sudden revulsion of feeling in the state against Broderick, who had secured his place, contributed to make him available as a candidate for governor and give him the overwhelming majority at the polls by which he was elected.

He assumed office, upon the retirement of Johnson, on January 8, 1858, and commenced with a very strong declaration or series of declarations by way of inaugural. As has already been said, he was a northern man; but in politics he favored the southern chivalry; and in his campaign and canvass he had repeatedly boasted of his adherence under any and all circumstances to the Democratic party. Upon taking office, however, notwithstanding the large vote by which he had been chosen, he seemed to feel uneasy and to put himself, as it were from the start, on the defensive. "Whilst I place a high estimate upon the good opinion of my fellow-citizens," said he, "and am always proud to have it, no one has less regard for what may be denominated *popular clamor*. I may injure myself; but the state shall not be shipwrecked during my administration, if I have the power to prevent it. It is far more important that I should be right than that I should be praised; and therefore I will do what I conceive to be my duty at all times and under all circumstances, and leave the vindication of my character, if assailed, to my acts and to posterity." He then proceeded to deplore the

prevalence of lynch-law and promised the whole power of the state to protect the regularly organized tribunals and the supremacy of the laws. He pronounced the practical operation of the United States land-commission act of 1851 as very bad and spoke in favor of settlers and laws protecting squatters. After some further observations on subjects, which had formed the common staple of stump speeches for years, he came to his main topic, which was the toleration of slavery. He was for the preservation of the Union and particularly for non-intervention with the slavery question in the south. He declared that the states could never be kept together by force. "We must live together as friends," he said, "and as equals in all respects, or we can not live together at all. We can not live together as friends unless we cease slandering and abusing each other. We can not be equals unless territory acquired by our common blood and common treasure is left free to emigrants from the respective states with their different species of property."¹

Turning now from politics to legislation, one of the first acts approved by him was a bill to change the name of Maria Rebecca Spear to Maria Rebecca Morrill. In doing so, he took occasion to observe that the executive could spend his time more profitably than in examining bills passed to gratify the taste or fancy of men and women in regard to names; and he added that, as the males in the state far exceeded in number the females, it was to be hoped that the females in general would not find it necessary to resort to the legislature or the courts in order to change their names. Upon another early occasion, he recommended by special message the distribution, pro rata among all the creditors, of the property of failing or absconding debtors levied on and held by attachment; and in the same connection he took occasion to express himself in reference to the usury laws, which were so common in the eastern states but had not found favor in California. "As a general principle," he said, "I have thought that freemen are quite as competent to agree on the amount which should be paid for the use of money as for any other property real or personal. Besides, where usury laws prevail, all sorts of devices are resorted to in order to evade them; and I doubt very

¹ Senate Journal, 1858, 54-60.

much whether they are strictly observed in any state. We want no laws upon our statute-book which can not be enforced. Whilst, therefore, I am not prepared to recommend such laws, I am satisfied that the public good demands that a law should be passed allowing only the legal rate of interest (ten per cent) on judgments."¹

The next notable event in Weller's administration was one that occasioned much talk and, though the governor had much to say against others, did not show him to be entirely without carelessness, if not fault, himself. It appears that an Indian named José Anastacio had been convicted of murder in Monterey county and sentenced to be hanged on February 12, 1858. The law required the judge of the court, in case of a capital conviction, to immediately transmit to the governor, by mail or otherwise, a statement of the conviction and judgment and of the testimony given on the trial. It seems that this statement did not reach the hands of Weller; but a relative of the doomed man went up to Sacramento to plead for him, and on February 8 the governor issued a paper, respiting the execution of "Anastasia Jesus" to March 5. The respite was on the same February 8 sent to the sheriff of Monterey county, and on the same day a letter was written to Craven P. Hester, judge of the third district court, before whom the conviction had been had, giving him notice of the respite and asking why he had not forwarded a transcript of the testimony. On February 12, notwithstanding the respite, José Anastacio was hanged; and, when the account of the execution was received at Sacramento, the governor, as may be imagined, was wild with anger. But the true state of the case soon became public and it was seen that the governor had made a mistake in using one name for another and very different one. On February 15 Judge Hester replied in an official manner to the notice that had been sent him to the effect that no such person as Anastasia Jesus had been convicted in his court; that the only person tried was one José Anastacio; that he had been convicted of murder, and that, in accordance with the law, he as judge had made out a statement of the conviction and judgment and of the testimony given at the trial and within three days after December 31, 1857,

¹Senate Journal, 1858, 138, 189-191.

the day of sentence, committed them to the mail, directed to Governor Weller at Sacramento. In that connection, however, he called attention to the fact that the statute did not require him to copy the evidence but only to make a statement of it, which meant its substance; and he had done so at the time and now sent a second one.

On February 17 Weller replied to Hester that if his statement had been forwarded to Sacramento within three days after December 31, 1857, it must have fallen into the hands of his predecessor as he himself had not taken office until January 9; but his predecessor had said that he never received such papers. It was the first time within his knowledge, he went on to say, when communications or letters, addressed to him through the post-office in California, had failed to reach him. And he added that if the statement just sent by the judge, and which appears to have convinced him of José Anastacio's guilt, had been in his possession before, "Monterey would not have been disgraced again by a *mob* execution." But it was especially upon Thomas B. Pool, the under-sheriff, that he poured out the vials of his wrath and vituperation. Pool, who conducted the execution, had on February 15 written that he had received the respite for Anastasia Jesus and was satisfied it was meant for José Anastacio; but that he had no right to understand the instrument otherwise than as it read; that he had therefore carried out the judgment and sentence of the court, and that, if he had not done so, the public excitement was so great that the prisoner would probably have been executed by the citizens of the place. Weller replied to Pool on February 19 and, among other condemnatory remarks, said, "You also say that, 'if you had not hung him, in all probability the citizens would' and you express the hope that I will 'place the proper construction on your conduct in the matter.' I assure you, sir, that I do place 'the proper construction' on your conduct and have no hesitation in saying you are guilty of judicial murder. You had no more authority, under the laws of this state, to execute that man than you have to shoot your neighbor without provocation. Those who advised you to avail yourself of the quibble in regard to the name, deserve the contempt of all honest men." And he closed his reply with saying

that Pool's "name ought to be consigned to eternal infamy," and that his only regret was that he had not the power to punish such conduct as it deserved.¹

Weller did not hesitate to speak out what he thought, and apparently without caring much or perhaps thinking much how it might sound. On March 8, having made up his mind that Thomas H. Williams, the attorney-general, did not receive pay enough, he recommended to the legislature that, as the constitution did not allow the salary of the attorney-general to be increased during his term of office, the difficulty should be overcome by allowing Williams fifteen hundred dollars additional pay for contingent expenses. This may not have been an entirely original method of getting around, or rather of violating, the constitution; but, if not, it was a bad copy and a worse example, too often afterwards followed. On the other hand, in approving the Van Ness ordinance of San Francisco, which settled the titles to all the lots within the limits of that city, served as a model for the settlement of the titles of all the land titles in that county and proved to be one of the most beneficent acts ever passed in the state, he apologized for his action and acknowledged that he had only done so in deference to the demands of the united San Francisco delegation. "Whether this bill," he said, "will settle the disputes and give quiet and security to the community, I confess I am not able to determine. It certainly will not close the door to litigation and may complicate the difficulty to a greater extent. I do not see how the legislature can decide these adverse claims in that city and hence it may be found that this act has no legal effect." But, as the San Francisco delegation were in favor of it and some had given a public pledge to sustain it, he would not prevent them from carrying out the express will of the people. And thus with a sort of metaphorical kick, exactly expressive of what he really thought of the bill as a piece of legislation, he shoved it through and washed his hands of it.²

The statute approving the Van Ness ordinance just mentioned deserves a more extended notice than it has as yet

¹ Senate Journal, 1858, 241-245.

² Senate Journal, 1858, 310, 339.

received. The original proposition was a plan gotten up for the settlement of titles to lands within the limits of the San Francisco city charter of 1851 and particularly that portion of them between the charter lines of 1850 and 1851, known as the Western Addition. Though mainly based upon the supposition that those lands were not pueblo lands, or in other words lands belonging to the city by virtue of the old Spanish or Mexican laws, but were public lands of the United States, it was calculated for their disposition in any event. It consisted of two ordinances, introduced into and passed by the city council of San Francisco—the first and most important on June 20, 1855, while Stephen P. Webb was mayor, and the second on September 27, 1855, while James Van Ness was mayor. Its main provisions were that the lands within the city limits should be entered by the mayor at the proper United States land office in trust for the occupants thereof; that the city should have such portions as were necessary for plazas, squares, streets and other public purposes, and that the remainder should belong to such persons as had been in the actual, bona-fide possession thereof from the first of January, 1855, to the twentieth of June of the same year or could show by legal adjudication that they were entitled to such possession. It further provided for the laying out of streets and for liberal selections of grounds for public purposes and likewise that application should be made to the legislature for its confirmation and ratification and to congress for the relinquishment to the city of all the right, title and interest of the United States. In accordance with these provisions, commissioners were appointed and the lands mentioned laid out into blocks; the necessary squares, streets, school-house and fire engine lots and other public places were reserved; a map was made; and the title to the remainder, so far as could be done by ordinance, was relinquished to the actual possessors as described. But it was plainly necessary, to make this action and particularly this relinquishment of title valid, that the state government would have to sanction it if the lands were pueblo lands or belonged to the city or the state, and the United States government if they belonged to the United States. As the state courts, when the matter came up for direct determination, decided

that there had been some sort of a pueblo at San Francisco and that the city lands were pueblo lands and as the United States courts followed them in such decision, it can easily be seen how very important, notwithstanding the remarks of the governor, was the confirmation and ratification by the state of the city ordinances. A few years subsequently, in further compliance with the provisions of the same ordinance, congress supplemented the action of the legislature with a special relinquishment of any title to the same land that might be held by the United States; and thus by wise legislation the whole vexed question of the source of title to city lands was settled and quieted. And it may be added, as above intimated and as will appear more at length further along, that a few years after the settlement of these so-called Van Ness ordinance lands, and in a somewhat similar but improved manner, all the lands within the limits of the four square leagues of the supposed old pueblo, outside of the charter lines of 1851 and therefore called "Outside Lands," were settled and disposed of.¹

As an offset or counterpoise to the very excellent legislation in confirming and ratifying the Van Ness ordinance, the legislature of 1858 passed a Sunday law. Notwithstanding a certain portion of the community has always been in favor of a Sunday law and other similar enactments for the enforcement of religious observances as well as of what they conceive to be the dictates of correct Sunday living, there can be but little doubt that restrictive acts of this kind do not, and never did, suit the spirit of the people of California. In no other part of the United States has there ever been so much liberty of conscience, so much freedom from dictation and so much disregard of what other people may think in this respect as in California. But repeated clamors for such a law, commencing in the early days, at length in 1858 brought about the passage of an act for the closing up of every store, shop and house of every description for business purposes, excepting taverns, eating-houses and certain others, and for the prohibition of the sale or exposure for sale of any goods or merchandise excepting certain specified kinds. This act, after causing much trouble, without accom-

¹ Stats. 1858, 52.

plishing any good, was declared unconstitutional by the supreme court on the ground that the legislature had no right to forbid or enjoin the lawful pursuit of a lawful occupation on any day of the week any more than it could forbid it altogether. Afterwards in 1861 another somewhat similar statute was passed and pronounced constitutional by the supreme court; but, though for a time it also gave much trouble, it was not sustained by public opinion and by degrees fell into a state of substantial desuetude. In 1883, on account of an effort to revive prosecutions, a stop was put to it by an absolute repeal of the law.¹

Several interesting propositions in regard to the state and state improvements came up during Weller's time. One was a project by an association, called the Oxon Company, to turn the head-waters of the Klamath river into the Sacramento. It presented itself in the form of a bill in the legislature of 1858, to authorize the work and grant the right of way therefor; but the proposed bill was defeated almost immediately by indefinite postponement.² Another proposition of somewhat similar character was a project by Oliver M. Wozencraft to irrigate the Colorado desert by turning into it water from the Colorado river; and an act, granting all the right, title and interest of the state to certain desert lands on condition that water should be supplied, was passed by the legislature of 1859. The act, however, was to be null if the United States should fail within three years to cede the land to the state. And, the United States having failed to make the cession, the desert failed to blossom in Wozencraft's time.³ In January, 1858, W. M. Ormsby and Martin Smith, claiming to be commissioners for the country lying east of California, presented a proposition to the legislature, asking the cession of all its lands east of the main Sierra Nevada range of mountains for the purpose of incorporating it with other land as far east as the Goose Creek range of mountains and forming a new territory. Their petition was referred to the committee on counties; and there it appears to have died of inanition.⁴ In

¹Stats. 1858, 124; Ex parte Newman, 9 Cal. 502; Stats. 1861, 655; Ex parte Andrews, 18 Cal. 678; Ex parte Koser, 60 Cal. 177; Stats. 1883, 1.

²Senate Journal, 1858, 606.

³Stats. 1859, 238.

⁴Assembly Journal, 1858, 137-140.

February, 1859, William F. Watkins of Siskiyou county presented a bill in the assembly to authorize citizens residing north of the fortieth parallel of north latitude to withdraw from California and organize a separate government; and about the same time Andres Pico of Los Angeles offered a proposition to erect out of the southern counties a territory of Colorado. It would seem, had all these wild projects gone through, though none of them did, that California was to be shaved off on the east and then what was left was to be divided up into three states or territories—the north probably to be called the state of Klamath and the south the territory and perhaps in time the state of Colorado. As for the last, an act was actually passed on April 19, 1859, giving the consent of California to the segregation of the six southern counties provided the people of those counties should vote for such segregation at the next election, and the creation out of said counties by congress of a new territory or state.¹

During the two sessions of the legislature in 1858 and 1859, while Weller was governor, he had occasion to exercise the veto power on numerous occasions, in some of which he was sustained and in some overruled. In several cases his vetoes were on account of clerical errors in the engrossing or enrolling of bills or neglect to attach the proper signatures; and his vetoes or rather the manner in which they were made were not agreeable to the respective houses. On one occasion in 1858, upon vetoing a bill for a claim, which it seems was proper and was afterwards allowed, he said that he "regretted having to differ so often from the legislature; but he had to guard the treasury from improper demands and he had to do so without stopping to inquire who the claimants were." Soon afterwards he vetoed a bill in reference to the authentication of certain evidence in relation to swamp and overflowed land; but the next day he withdrew his veto and the following day approved the bill.² One bill he approved notwithstanding an error of the enrolling clerk, to which he called attention; another he vetoed on the ground that the bill that had been sent him, though in every respect properly

¹ Assembly Journal, 1859, 230, 291, 341-352; Stats. 1859, 310.

² Senate Journal, 1858, 330, 338-354, 670.

attested, was not in his opinion the one which had passed the legislature; and three others he sent back to the assembly with a message that, as soon as he was officially informed that they had received the sanction of the senate, they would probably receive his approval. After approving one bill, he called attention to the fact that he had acted inadvertently for the reason that it had no enacting clause; and, in vetoing another in reference to municipal offices in San Francisco, where it seems that the Democratic majority of the legislature were in favor of the bill while the entire San Francisco delegation were against it and some remarks had apparently been made about the politics of the latter, he said, "I have nothing to do with the political opinions of these gentlemen. As the chosen representatives of the people, they are entitled to respect and their views in regard to a question purely local ought not to be disregarded. I should lose my own self-respect if I stopped to inquire into the politics of men who are to be benefited by the passage of laws. In this regard I have neither friends nor foes. In the exercise of the appointing power I always prefer those who belong to the same political organization that I do; but in legislation, no consideration of this character can be allowed to influence my actions."¹

In 1859 he appeared to be somewhat more complaisant towards the legislature. In approving an act for several new judicial districts he said he deemed it necessary to express his doubts about the bill; but he was unwilling to set them up "against the expressed opinions of the immediate representatives of the people." Later on, in approving several bills for rewards for capturing criminals, he expressed doubts but "yielded his convictions to the judgment of the legislature." Still later, and about the end of the session of 1859, he had occasion to supplement something he had said at the beginning of the session in a very striking manner. In his annual message to the legislature he had deprecated the influence of so-called "lobby members" and had said, "Gentlemen of influence and position are frequently found at the seat of government during the session of the legislature, selling out their services to secure the passage of laws.

¹ Senate Journal, 1858, 452, 695; Assembly Journal, 1858, 159, 645, 657, 658.

Caring but little for the merits of the measure, they are ready for a consideration to undertake its passage. If, as it is said is generally the case, the fee is contingent, their energies and ingenuity are constantly taxed; and means are used which sometimes throw suspicion upon the integrity of the legislator himself." On the occasion referred to, the governor sent in an indignant veto of a bill in relation to pilots, which had passed both houses, on account of a letter written by one of the gentlemen lobbyists before mentioned, in which he had said, "Its passage will be recommended by the committee and I think it will become a law; for I have bought up everybody and used the whole appropriation to do so;" and again, "my promises are all distributed in the right place and I feel more like success to-day than I have any day since I have been up here;" and again, "I suppose, when this bill gets to calling, that all the clique will be up here; and, unless they have got over five thousand dollars to offer, I think that they will go down with their fingers in their mouths." It is hardly necessary to add that the veto was sustained without a dissenting voice.¹

But the most exciting object of consideration before the legislature still continued to be that of slavery and its adjuncts. The course of public events in this respect had reached what may be called the condition of rapids before the last, unavoidable, fatal plunge. No one in California, or for that matter in any free state, regarded the position of affairs so desperate as it in fact was. No one for a moment thought the precipitous chasm so near. But the southern leaders were determined to plunge or, to put it in ancient parlance, the gods intended to destroy them and first made them mad; and the issue came with fearful rapidity. In the legislature of 1858, the old and long-continued fight was resumed by the introduction in the senate, on February 1, of a resolution by William I. Ferguson of Sacramento against the admission of Kansas under the Lecompton or pro-slavery constitution. In opposition to this, a substitute resolution was offered by John C. Burch, concurring in Buchanan's views on the Kansas question and in favor of its admission under the Lecompton constitution "and to encourage in our senators and congressmen that

¹ Senate Journal, 1859, 186; Assembly Journal, 1859, 704, 705, 748.

non-intervention with the domestic institutions of the country, which by our federal constitution is guaranteed to the states and the people." In the assembly a somewhat similar resolution to that of Ferguson in the senate was introduced by Thomas Gray of San Francisco; but it was almost immediately laid on the table and then indefinitely postponed. After much wrangling a simple concurrent resolution was adopted, instructing the Californian senators and requesting the representatives in congress to vote for the immediate admission of Kansas, with the Lecompton constitution, "into the Union on an equal footing with the original states in all respects whatever."¹

The slavery question and the influence exerted by the slave power made themselves felt in numerous other ways besides direct votes. Among them was a renewal of the proscription or attempted proscription against free negroes. A bill was introduced into the assembly of 1858 to prohibit the immigration to, and residence in, the state of negroes and mulattoes; and a long and bitter fight, causing much ill-feeling and involving numerous quarrels but ending in nothing of importance, was the result. Though the bill passed both houses, it was, however, not pressed and never became a law.² There were also two other remarkable results of the agitation—one of which turned out to be a comedy or rather a farce, laughed at throughout the country, and the other a sad and deplorable tragedy, which under no circumstances could have accomplished any good or afforded anybody any real satisfaction. The first was what was known as the Archy case. One Charles A. Stovall, a citizen of Mississippi, had in 1857 come to California overland from that state and brought along his slave, a negro boy called Archy. After hiring Archy out for some time at Sacramento, Stovall thought of returning to Mississippi and, as a preliminary, put the slave on a Sacramento river steamboat, with the intention of sending him to San Francisco and thence to Mississippi in charge of an agent. But the boy, who had attracted a great deal of attention as a slave brought voluntarily into the state, refused to be taken back and escaped from the vessel. Stovall thereupon for such escape had him

¹ Senate Journal, 1858, 151; Assembly Journal, 1858, 106, 169; Stats. 1858, 353, 354.

² Assembly Journal, 1858, 408, 462.

arrested as a fugitive slave, and he was taken into custody by the Sacramento chief of police, who however refused to deliver him over to his master. Stovall immediately sued out a writ of habeas corpus for his possession, and the matter came up for adjudication before the supreme court. The decision and opinion of that tribunal was rendered by Peter H. Burnett, formerly governor, who had been appointed a justice of that court by Governor Johnson in 1857 and filled the office until October, 1858.

It was, perhaps, pretty well known beforehand what kind of a view Burnett, as a southern man with strong southern sympathies, would be likely to take of the case. He believed in slavery and on every occasion, when the question of its propriety arose, advocated it. But, when he came to give reasons for restoring Archy to his master, he found difficulties and, in saying too much, said some very ridiculous things. After plainly and distinctly deciding that Stovall could not sustain the character of either a transient traveler or visitor and under the general law was not entitled to Archy, he yet held that there were circumstances connected with the particular case that might exempt him from the operation of the rules laid down. One of these circumstances appears to have been that Stovall was "a young man" who was "traveling for his health;" another was that he was "short of means upon his arrival" in California, and still another that this was the "first case that had occurred under the existing law." "This is the first case," continued the justice, "and under the circumstances we are not disposed to rigidly enforce the rule for the first time. But in reference to all future cases, it is our purpose to enforce the rules laid down strictly according to their true intent and spirit;" and he ordered Archy to be turned over to his master. Joseph G. Baldwin, the author and wit, who succeeded Burnett upon the supreme bench, characterized the decision as "giving the law to the north and the nigger to the south" and subsequently, in one of his happy moments, prepared a humorous abstract or syllabus of the case, in which he said it decided that the constitution does not apply to young men traveling for their health; that it does not apply for the first time, and that the decisions of the supreme court are not to be taken as precedents.¹ It may be added that Archy, after being delivered

¹ Ex parte Archy, 9 Cal. 147; Hittell's San Francisco, 270, 271.

over to Stovall, was taken to San Francisco for the purpose of being sent back to Mississippi; but his San Francisco friends sued out a new writ of habeas corpus—this time for his liberation instead of for his re-delivery into slavery. He was taken before Judge Thomas W. Freelon of the county court of San Francisco; but, while the case was pending before him, Stovall saw fit to swear to a new affidavit, which did not correspond very well with the one he had sworn to in Sacramento. In the latter he made oath that Archy had escaped from him in the state of Mississippi and procured a warrant from George Pen Johnston, United States commissioner, for his arrest as a fugitive slave from Mississippi. Upon this state of facts, and at the request of Stovall's attorneys, James H. Hardy and George F. James, Archy was discharged by Freelon. But he was immediately afterwards re-arrested and taken before George Pen Johnston, who on April 14, 1858, after very full consideration, decided that Archy was in no proper sense a fugitive slave from Mississippi and thereupon discharged him finally—much to Archy's own relief and to the satisfaction of the larger part of the community.¹

The tragedy, which has been referred to as one of the results of the agitation of the slavery question and the ill-feeling engendered and bad blood caused thereby, was the fatal duel between William I. Ferguson, senator from Sacramento county, and George Pen Johnston, clerk of the United States circuit court at San Francisco and the same United States commissioner who had discharged Archy as has been related. Johnston was of southern blood, a chivalry partisan and a friend and supporter of Gwin. Ferguson was a Missourian by birth, an anti-Lecompton Democrat and a friend and supporter of Broderick. But they were personal friends; both scholarly men; both lively and fond of society; both disposed to conviviality, and both very general favorites among their acquaintances. When in particularly happy train, Johnston would often astonish his friends with reciting poetry; he for instance could recite Scott's *Lady of the Lake* almost from beginning to end; while Ferguson, on like occasions, would usually indulge his humor in a rollicking song,

¹ Daily Evening Bulletin, March 17, 1858; Daily Alta California, April 15, 1858.

from the burden of which he got to be called "Ipse-doodle." But as their evil geniuses would have it, on the evening of August 19, 1858, while in a crowded drinking saloon in San Francisco where talk ran high, they got into a quarrel about certain statements, charged by Johnston to have been made by Ferguson at a recent political convention held at Sacramento. Ferguson denied the charges with perhaps more warmth than was necessary; and the result was that Johnston challenged him to mortal combat. Under ordinary circumstances the quarrel would have been fixed up; but things had already arrived at such a pass that blood alone, and it would seem anti-Lecompton blood alone, could satisfy the demand. It was soon arranged that the quarrel, ridiculous as it was, should be fought out on a little level ground on the easterly side of Angel Island at five o'clock on the afternoon of August 21, 1858.

This duel, which as will be seen by a comparison of dates was more than a year prior to that between Broderick and Terry, was perhaps the most foolish and absurd in every respect that ever occurred between men of any prominence in the state. The principals had always been friends; and there was no reason for a quarrel between them. But each seems to have allowed himself to be egged on by irresponsible backers; and the result was the final meeting agreed upon. The parties were to fight with dueling pistols and to commence at ten paces distance from each other; and, if the first fire was ineffective, the distance was to be shortened ten feet. The parties met as agreed upon; and fired at each other without result. The distance was then reduced by ten feet and a second fire took place, but still without result. There was even a third fire without either being hit. At this, it is said, Johnston demanded either an apology or a fourth fire; and upon the refusal of the former the latter took place. At this Ferguson was hit in the right thigh and Johnston in the left wrist. Thereupon the principals expressed themselves as entirely satisfied; they shook hands, and then returned to San Francisco to enjoy the distinction of having vindicated their characters and, by allowing themselves to run the risk of being killed at a tricky game, entitle themselves to be called honorable and brave men. Johnston's hurt amounted to noth-

ing; but Ferguson's was mortal. He was removed to the Union Hotel, Broderick's head-quarters in San Francisco, where he lingered, growing worse and worse, until September 14, when it was found necessary to amputate his right leg; and he died under the operation.¹

Ferguson, after his death, was regarded by a large portion of the community as a victim. It was recalled that he had been not only an exceedingly urbane man, but a man of much force. Particularly as chairman of the judiciary committee of the senate in 1856, he had manifested very marked ability. On the other hand there was a very general demand that Johnston should be punished. He had been the advocate, while an assemblyman from San Francisco in the legislature of 1855, of an amendment to the law against dueling, increasing the limit of the punishment from imprisonment in the state prison for five years to imprisonment for seven years and adding various civil liabilities; and it was thought no more than proper, as he had been one of the first to violate his own law, that he should suffer the penalty. He was subsequently prosecuted; but his trial, like all other prosecutions of the kind, proved to be a farce. Though the constitution and the laws were against dueling, public opinion had not yet arrived at that unanimity on the subject, which it has since reached. It was said, however, and probably with some truth, that Johnston suffered more from sorrow and regret for the death of Ferguson than he would have suffered from any punishment the law could have inflicted upon him. No one ever suspected that Terry, after the still more famous duel of the next year, regretted the killing of Broderick; but Johnston was a man of much more tender and sensitive feeling than Terry. While the latter continued to be rough and aggressive until he was shot down by a United States marshal for an assault upon Justice Stephen J. Field of the United States supreme court on August 14, 1889, it was remarked that Johnston became a very different man from what he had been before. He was no longer gay or full of good humor or fond of having a good time. From the time of the duel, he lived a very quiet life, devoting

¹ Daily Alta California, August 22 and September 15, 1858.

² Hittell's Gen. Laws, 1444, 1551.

himself chiefly to journalism and never attempting to again assume any prominent position in public affairs. He continued to live in San Francisco and died there on March 4, 1884.¹

The senate of 1859, on the first Friday after its meeting, adjourned over until the next Monday out of respect to the memory of Ferguson, who if he had lived would have sat in it. But the political complexion of the senate that year and particularly that of the assembly was even more decidedly Buchanan, administration, Lecompton, chivalry or pro-slavery—for it might have been called any or all of those names—than it had been in 1858, when, as will be recollected, Weller and his associates came in on what may be termed an anti-Broderick tidal wave in the Democratic party. The issue had at last been made whether slavery or freedom was to rule, whether northern men were to continue to be subservient to the south or assert their rights and privileges; and the great majority of the Democratic party in California, including Weller and his associates but excluding Broderick and his supporters, were on the southern side. The situation was well shown by the vote on certain resolutions introduced by William Holden on January 21, 1859. These resolutions set forth by way of preamble that the legislature of 1858 had instructed the United States senators to support the policy of the administration in regard to the admission of Kansas under the Lecompton constitution, and that Broderick had not only disregarded those instructions but charged that they misrepresented the wishes of the people of California:—therefore, resolved that the legislature of a state is the immediate constituency of a United States senator; that such constituency had a right to instruct a United States senator; that in case of such instruction there was no other honorable course for such senator but obedience or resignation; that Broderick had neither obeyed nor resigned, and that the language he used towards the chief executive in a speech in the senate of the United States on March 22, 1858, was not only undignified and disrespectful but alike insulting to the nation and humiliating to the people. These resolutions were adopted in the senate by a vote of twenty-three to nine, three declining to vote, and in the assembly by fifty-three

¹ Davis' Political Conventions, 634.

ayes to nineteen noes, the Republicans voting with the anti-Lecompton Democrats. An effort had been made in the assembly to show that Broderick could not have disobeyed the instructions of the California legislature for the reason that they were dated March 17, 1858, and could not have reached him at Washington either on March 21, 1858, when his arraignment of the president took place, or at any time before his anti-Lecompton vote was thrown. But political rancor had reached such a height that reason fared as law does in time of war; it was not heard or, if heard, was not heeded; members were dragooned and forced into voting; and as a result the resolutions went upon the journal and remained there until 1861, when they were declared false and defamatory and were in effect expunged from the record.¹

Another matter of great interest, which had long been a source of difficulty and trouble in the state and now in the administration of Weller became more difficult and troublesome than ever, was the state prison. In Johnson's time, on account of irregularities and frauds not only in the construction of the prison at Point San Quentin but also in the management of the prisoners, it was determined to return to the leasing system; and a new lease for five years from March 26, 1856, was accordingly made out to James M. Estell, the same person who had been more or less connected with the institution as a contractor, lessee or otherwise almost from the beginning of the state. He was a politician as well as a contractor, and was then a member of the assembly. In March, 1857, he laid before the legislature a communication to the effect that he was in the greatest distress for the want of means to carry on the prison; that instead of receiving cash in accordance with his contract he had been compelled to accept bonds, which were greatly depreciated in value and would not yield the necessary money, and that all the officers, guards and convicts at the prison were in a suffering condition and, unless immediate relief were afforded, he could not answer for the result. But, either because the state had had enough of Estell or had no means to furnish relief or was unwilling to do

¹ Senate Journal, 1859; 98, 156, 157; Assembly Journal, 1859, 216-219; Stats. 1861, 670, 671.

so, nothing of importance was done at the time, except to advertise for proposals for a new lease; and in the meanwhile Estell assigned the unexpired lease he still held to John F. McCauley. Under the assignment, however, there seems to have been little or no improvement and complaints became more and more numerous and positive. Governor Johnson in his final message in January, 1858, though unwilling to find fault with anybody, said enough to indicate the bad condition of affairs; and according to Weller's account, transmitted in the form of a special message to the senate on March 10, 1858, the abuses were simply enormous and almost constant, and shameful instances had occurred which were sufficient, as he put it, to "disgrace any civilized community."¹

In response to the general complaints the legislature on February 26, 1858, passed an act authorizing the governor and making it his duty, by and through such agents as he might appoint, to take immediate possession of the state prison and grounds and assume the custody, control and management of the convicts.² Weller accordingly, accompanied by Joseph Walkup, lieutenant-governor, and Ferris Forman, secretary of state, proceeded to the state prison and on March 1, 1858, against the will and protest of McCauley's agents, took possession, breaking open some inner doors to get the keys. Soon afterwards, McCauley commenced an action against Weller, Walkup and Forman before a justice of the peace in Marin county for forcible entry and unlawful detainer. It was tried by a jury and, a verdict of not guilty being returned, judgment was entered for defendants. McCauley appealed to the county court, which reversed the decision, ordered restitution of the premises and gave a personal judgment against Weller for something over twelve thousand five hundred dollars. From this Weller appealed to the supreme court; and at the January term, 1859, the judgment was affirmed.³ On March 28 1859, Weller called the attention of the senate to the judgment; and a joint resolution was adopted relative to receiving proposals from McCauley and Estell for a settlement of their claims and a surrender by them of the state prison grounds. They offered to

¹ Assembly Journal, 1857, 512, 722; Senate Journal, 1858, 28, 29, 325-329.

² Stats. 1858, 32.

³ McCauley *vs.* Weller, 12 Cal. 500; Senate Journal, 1858, 22, 23.

settle for the sum of one hundred and twenty thousand dollars. This, however, was not accepted and Weller was left to complain on April 18, 1859, that the legislature was about to adjourn without disposing of the question and leaving him and some of his friends to be harassed with lawsuits.¹ It was evident from his urgency in the matter, as well as from various expressions of disgust then and afterwards, that he was heartily sick of the subject.² But, though he and his particular friends were not specially harassed as he feared, the litigation was not ended for several years. In July, 1859, an action was brought under the direction of the legislature against McCauley to cancel the lease and contract of 1856 with Estell and its assignment; but it failed. The next move was an application by McCauley for a mandamus against Samuel H. Brooks, controller of state, compelling him to issue warrants amounting to two hundred and seventy thousand dollars, alleged to be due up to March 26, 1860, on the lease and contract with Estell; and in this McCauley won. In April, 1860, the legislature passed an act authorizing a settlement and appropriating two hundred and seventy-five thousand dollars for the purpose; and at length, under this act, the money was paid, and the trouble came to an end.³

Weller during his term made various recommendations, in addition to those already mentioned, which are deserving of notice. Some of them have since been acted on. He recommended that the testimony in capital cases should be taken down in full and transmitted to the governor. He recommended action to prevent Mexican grants from being unduly extended for the purpose of covering improvements of settlers, which had been erected on lands supposed to be a part of the public domain.⁴ He gained credit for vetoing an act, passed April 20, 1858, purporting to suppress gaming, which was inefficient and said to be much worse than the act then in force.⁵ In reference to boys convicted of criminal offenses, he said they should be kept in county jails

¹ Senate Journal, 1859, 574, 575, 725, 796, 797.

² Assembly Journal, 1859, 378; Senate Journal, 1860, 53.

³ *State vs. McCauley*, 15 Cal. 429; *McCauley vs. Brooks*, 16 Cal. 11; Stats. 1860, 249, 348.

⁴ Senate Journal, 1858, 470, 599.

⁵ Senate Journal, 1858, 618, 619.

and not sent to the state prison for the reason that San Quentin, as it was then managed, was "the most efficient school for villainy that can be found in any country." He called attention in 1858 to the extravagance and unreasonableness of allowing mileage at the rate of seventy-five cents per mile for one convict and fifty cents per mile for every additional convict, where there was more than one, transported to the state prison, and recommended a reduction of forty per cent.¹ In 1859 he recommended that two-thirds of a jury might render a verdict in civil cases and that in criminal cases a jury should consist of fifteen members, of whom any twelve might convict. He was in favor of amending the attachment laws, purifying primary elections, granting licenses to sell liquor only to persons of character and fitness and of a geological survey by a geologist of the first rank.² In answer to a call for aid to put down an anti-Chinese riot in Shasta county in 1859, Weller immediately sent one hundred and thirteen rifles and a message that "this spirit of mobocracy must be crushed out, no matter what blood it may cost."³

But, notwithstanding all that can be placed to his credit, there can be no doubt that as governor, Weller did not satisfy his own party or any other. Though fully committed to the chivalry, the then dominant wing of the Democracy, he had not succeeded in pleasing the leading men; and they chose for his successor, instead of himself another northern man with southern sympathies, who suited them better. Weller himself, in spite of his confidence in his good intentions and abilities, felt that he had not been a success. In his message to the legislature of 1860, just before relinquishing office, he said, using the third person but speaking of himself, "The governor has from time to time recommended to your predecessors measures calculated to reform abuses and diminish expenditures; but they have generally failed to receive either their sanction or attention. It was, no doubt, supposed by those who formed a constitution, which requires the executive 'to communicate, by message, to the legislature, at every session, the condition of the state and recommend such matters as he shall deem expedient,' that from his position, where

¹ Assembly Journal, 1858, 183, 389.

² Senate Journal, 1859, 21, 22, 26, 27.

³ Assembly Journal, 1859, 405.

he could overlook all the operations of the government, he would be able to point out the evils which retarded our progress and suggest appropriate remedies. The legislature seem to have acted upon a different principle, or it may be that that department had very little respect for the opinions of the present executive."¹

He went on to state that the financial showing of the state was good; that during the year 1859, the receipts had been nearly twelve hundred thousand dollars, a little more than two hundred and fifty thousand over the expenditures, and that he left upwards of three hundred thousand dollars more in the treasury than he had found there at the commencement of his administration. But still, he said, there was much waste; the expenses of the legislative and judicial departments could be greatly reduced without injury; too much was paid for printing; the statutes in Spanish of two hundred and sixteen pages, for instance, cost the state over twenty-nine dollars a volume. Taxes should be reduced and changes made in the manner of administering the revenue laws and particularly those in reference to poll taxes. If properly collected, the poll taxes alone should pay the interest on the public debt; but San Francisco county, with a voting population of some six thousand more than Siskiyou, did not pay so much poll tax by nearly three thousand dollars. Seven counties, Butte, El Dorado, Nevada, Placer, Sacramento, Siskiyou and Tuolumne, paid more than half of all the poll taxes received. Besides, entirely too much was paid out for collecting the revenue. In some counties, the cost was forty per cent of the amount collected. In addition to these and many other observations and recommendations, he adverted to the necessity of ascertaining the eastern boundary line of the state, on account particularly of the recent discoveries of silver near the border and the liability, among the great numbers likely to crowd thither, to disputes and conflicts; and he also insisted upon the necessity of a constitutional convention to reform abuses, reduce expenditures, reorganize the courts and, in effect, make a new and model state out of California. He thought Mexico would ultimately become absorbed by the United States; said that it was unfit to govern itself, and recom-

¹ Senate Journal, 1860, 36.

mended a protectorate—apparently with the object of preserving it in a proper condition to fulfill its manifest destiny. But at the same time he was apprehensive that there might be great danger about the continued existence of the United States. He said that for forty years, commencing with stealthy steps, the north had continued to assault the institutions of the south, and in effect that in a few years there might be nothing left of the Union. As for California, however, he thought he could say that she had no disposition to interfere. "Standing upon the compromises of our venerated fathers," he exclaimed, "she says to the south as well as to the north, We are ready with our lives to protect all your institutions against aggression, come from whatever quarter it may. But before all, if the wild spirit of fanaticism which now pervades the land should destroy this magnificent confederacy—which God forbid—she will not go with the south or the north, but here upon the shores of the Pacific found a mighty republic which may in the end prove the greatest of all."¹

In conclusion of his remarkable message, evidently smarting under the fact that the Democracy of California had relegated him to private life and thinking it proper in this public manner to give his own account of why he had failed to satisfy his own party, he said that he might perhaps have exercised the pardoning power too frequently or, as he put it, allowed "his sympathies to control his judgment;" but he added that, if he had erred in that respect, it had been on the side of mercy; and he was satisfied. It was, however, likely that he had incurred much more ill-will in the exercise of the veto power than in any other way. In making use of that constitutional prerogative, to which he had found it necessary on a number of occasions to resort, he claimed that he had never allowed either his personal or his party feelings to control his action; adding that if he had pursued a different course he might have retained the friendship of many who were now arrayed against him; but he would have lost his own self-respect. Many of the bills he had vetoed, he went on to say, had nothing to commend them, other than that the parties, who were to be the beneficiaries,

¹Senate Journal, 1860, 37-45, 59-65.

were political or personal friends of the executive; and his past history, he thought, ought to have been a sufficient guaranty that no such considerations would be allowed to influence him. Special legislation had been the great curse of the state. "The history of the state," he continued, without in terms again mentioning but evidently referring to the political and personal friends previously noticed, "has abundantly proved that the legislative power has frequently been used to carry out the schemes of speculators and put money in their pockets by plundering the public treasury. I saw the controlling influence which 'lobby members' exercised over legislation; and against all these things I determined to make war, without stopping to count the cost to me individually."¹

Under the circumstances, after giving up his office of governor, there was nothing left for Weller in California. He accordingly went back to Washington, where President Buchanan still sat at the helm, and still in a measure guided the ship of state among the breakers into which it had drifted. Bigler, after being shelved in California, had managed to obtain from Buchanan an appointment as minister to Chili. Weller in much the same manner now managed to obtain from Buchanan an appointment as minister to Mexico and occupied that position from November 7, 1860, until May 14, 1861, when he was recalled by President Lincoln. Whether Buchanan in choosing him minister to Mexico did so on account of Weller's public declaration that that country was unfit to govern itself and his recommendation of a protectorate by the United States over it, may be questionable; it is difficult to account for various things that Buchanan did; but it is certain that one of Lincoln's first acts was to replace the minister to Mexico with a new man. Weller thereupon returned to the United States and took up his residence in New Orleans, where he lived until his death on August 7, 1875.²

¹ Senate Journal, 1860, 65-70.

² Davis' Political Conventions, 598.

CHAPTER X.

LATHAM AND DOWNEY.

THE next governor of California was Milton S. Latham. He was a native of Ohio; born at Columbus, May 23, 1827; graduated at Jefferson College, Pennsylvania, in 1845; then removed to Alabama, where he studied law and served as clerk of a court, and finally emigrated to California in the winter of 1849-50. His chief characteristic was suavity of manners; and it carried him very far. He did not by any means have the ability of Weller; but he was much more careful in what he said and prudent in what he did; and, though he could not boast of any of the blue blood of the so-called first families of the south, he suited the chivalry; and as they accepted him, he gave himself up to them. He was almost from the start of his career in California an office-holder; in 1850 he was appointed and served as clerk of the recorder's court in San Francisco; he subsequently became district attorney in Sacramento and afterwards in El Dorado county; in 1852 was elected a representative in congress and served a term; in 1855 was appointed collector of the port of San Francisco by President Pierce and held that office until 1857; and in 1859 was elected governor. In the Lecompton, chivalry or pro-slavery convention, which nominated him and which met at Sacramento on June 22, 1859, he was so chosen on the second ballot by one hundred and thirty-six votes to one hundred and four for Weller and twenty-nine for John Nugent. At the election on September 7, 1859, which resulted in even a greater triumph for the chivalry than the election of Weller in 1857, the vote stood upwards of sixty-two thousand for Latham to a little over thirty-one thousand for John Currey, anti-Lecompton, and about ten thousand for Leland Stanford, Republican. At the same time John G. Downey received fifty-

nine thousand votes for lieutenant-governor against thirty-one thousand for John Conness, anti-Lecompton, and eleven thousand for James F. Kennedy, Republican.¹

Latham was inaugurated as governor on January 9, 1860. On the same day he delivered his inaugural address. He commenced by saying that it would be a better custom for an officer, upon the termination of an official career, to point his constituency to his several completed acts, than, in the assumption of office, to promise what might not be consummated. He next said that general laws should not be interfered with, except in cases where absolutely necessary. He was of opinion that the state prison controversy should be compromised. And he was decidedly opposed to the system of almost indiscriminate pardons of criminals, which had been pursued by Weller, Johnson and Bigler, and it should be stopped. "During the past eight years," he said, "one hundred and sixty-nine convicts have received executive clemency, being nearly one-eleventh of the entire number imprisoned, independently of escapes, deaths and discharges. From this statement it would appear that either the courts have been influenced by passion or unjustifiable haste, or that the power of relieving criminals of the judgment of the law has been unwarrantably exercised. Which is the case it is not my province to even surmise. But I am sure that the framers of our compact of government never designed that the pardoning power, vested in the executive, was to be used to thwart the judgments of the courts. The power to pardon is a mere incident to the execution of the law, intended to aid its just operation—never to set it at defiance. When sentence is once passed, the courts become powerless; and though subsequently it may appear, during the operation of the punishment, by newly-discovered evidence that the person so convicted is innocent, or new facts may show that the judgment is too severe, no power exists in the court to remedy the wrong. Then, and then only, does the constitution design that the executive shall step in and arrest by his decree the unjust rigor of the law."²

He next turned his attention to a very important project

¹ Davis' Political Conventions, 99-109, 599.

² Senate Journal, 1860, 105-108.

which had been brought before the legislature and urged with great persistence in 1859, and was still being urged. This was a private scheme to build a bulkhead or sea-wall on the water front of San Francisco. The proposition was to confer upon a private corporation the power to construct the sea-wall all around the water front and the right for fifty years to collect tolls and wharfage. It is true there was to be reserved a power in the board of supervisors or other governing head of the city to fix the rates of wharfage and tolls; but under any and all circumstances the project contemplated an immense monopoly and, if carried out, would have made the bulkhead company the despots of the city and fastened upon the community a power and authority, to which "the old man of the sea" in the Arabian tale would not have been a circumstance. Such at least were the opinions of those who opposed the project—and they consisted of the majority of the citizens of San Francisco and especially the merchants and others engaged in commercial pursuits. In the legislature of 1859, a few of the senators and a majority of the assemblymen from San Francisco expressed themselves as favorable to the scheme; but, on the other hand, there were very powerful remonstrances of San Francisco citizens against it, and the project failed. Latham, in his inaugural, knowing that it would come up again, took occasion to mention and moralize upon it as follows: "The feasibility and even necessity of this project has already been the subject of much legislative discussion. There is no disguising the fact that under our popular institutions and the selfish speculating spirit of the day, straightforward, honest legislation is becoming more and more difficult. It is the duty of those intrusted with law-making to acknowledge this fact, to accept it as undeniable truth—then sternly resist and correct it, if possible." He evidently meant that the project was urged "from bad motives and with improper means" and concluded that the better opinion was against it.¹

There were a few other topics in Latham's inaugural, but nothing to denote any great amount of earnestness. He must have known that he would occupy the office of governor but a short time, and that there was little or no use to say much or

¹ Senate Journal, 1860, 109.

promise anything in reference to his administration. All his remarks were therefore rather perfunctory than otherwise. He, however, spoke in favor of a united and persistent effort to secure a daily overland mail connection with the eastern states and eventually a transcontinental railroad; and he characterized the doings of the vigilance committee of 1856 as a "scene of lawlessness without a parallel in the history of our republic." On Wednesday, the second day after the inauguration, a concurrent resolution was adopted to the effect that the two houses would that day go into the election of a United States senator, to fill the vacancy caused by the death of Broderick; and it accordingly took place. The office of United States senator, then as now, was considered as of much more importance and more desirable than that of governor; there was nothing then to prevent a governor from being elected to it; and it was perfectly well known that Latham wanted it. The arrangement to bring on the election forthwith was in his interest. The candidates presented were Latham by the triumphant chivalry Democracy; Edmund Randolph by the anti-Lecompton Democracy, and Oscar L. Shafter by the Republicans. There was but one ballot. The vote was ninety-seven for Latham; fourteen for Randolph, and three for Shafter.¹

On the next day, January 12, Latham transmitted to the legislature a special message to the effect that, as an act had been passed in 1859 authorizing the people of the six southern counties to vote on the question of separation from the remainder of the state, he had transmitted to the president of the United States a copy of that act, a statement of the vote that had been taken which was two to one in favor of it, and a letter embodying his own views upon the subject. He, however, deemed it proper, as the people of the state were deeply interested in the matter and as he himself might soon be required to urge or oppose the formation of the new government in the United States senate, to communicate what he had written. In his letter to the president, which bore date the same day, he maintained that what he termed the power to go backward—by which he seems to have meant the power to return from the condition of a state to

¹Senate Journal, 1860, 111-126.

that of a territory—was subversive of the Union. “Equally with the doctrine of nullification and secession, it is unprovided for in the federal constitution.” At the same time he drew a distinction between an entire state being made a territory, and a small portion of a state being segregated with the purpose of making a new state out of it. Such a change, he claimed, could be made by congress and the state legislature without a vote of the people; and he cited various instances, in which changes had been made in state boundaries, in alleged support of his views. But such changes of boundaries, he went on to maintain, were not amendments to state constitutions and could not be effected by mere amendments to state constitutions, for the reason that the United States constitution required the consent of congress to them.¹

It might be too much to say that the scheme of making a new southern state out of the southern counties of California was to be credited to Latham. But it seems certain that it was just such a scheme as suited the caliber of the man. His extraordinary success, after Broderick was out of the way and Weller had been shelved, was calculated to give him a very exalted idea of the position he might, by skillful manipulation, occupy in the country. If for instance he could, by means of the proposed new territory and state that was to be made of it, restore the equilibrium and particularly the supremacy of the south and the slave power, there was a career before him to which his attainment of the United states senatorship would bear no comparison. It had been found that compromises were worthless; it had been found that the Lecompton constitution of Kansas did not fill the bill; but if this new Southern territory—the only one with population sufficient for a new state—could be pressed into the service of slavery, what a long and brilliant vista of office and influence, even among the blue-bloods of the chivalry party, it would open up for him who could identify himself with the movement and claim it as his own! There can be not much question, if search be made for the motives of Latham's actions, that notions of this kind had taken possession of him, little as he was calculated either by acquirements or natural breadth of mind to carry them successfully through. No man ever left California,

¹ Senate Journal, 1860, 127-131.

as its representative in congress, with a grander idea of what he was to accomplish or a more confident belief that he would accomplish it.

In the meanwhile, on the day of his election as United States senator and the day before the letter to the president was dated, Latham wrote out his resignation of the office of governor, fixing the time for it to take effect on Saturday, January 14, at noon. In his resignation, having apparently only the United States senatorship in his mind, he said to the legislature, "I accept the new position, so honorable in its character, and vacate the executive chair without hesitation at the bidding of the state, firmly believing that I can serve her more effectively in the national council than elsewhere."¹ On January 14, accordingly, the legislature met in joint convention; the resignation was read and accepted; and the lieutenant-governor, John G. Downey, was inducted into the office of governor. Upon thus assuming his new position at the head of the state government, Downey made a few brief inaugural remarks, in which he promised to practice in his administration a rigid and just economy and to pursue the same general policy "so plainly and admirably indicated" by Governor Latham.² One of his first moves was in the line of policy thus indicated. Latham had not only found fault with his predecessor, Weller, for abusing the pardoning power; but he had also, at least impliedly, condemned his action in reference to Indian disturbances by saying that, if forces were to be sent against Indians, a sufficient number of troops should be sent to crush resistance instead of merely provoking it. This was on January 13, the day after Latham's resignation was written and the day before it took effect; and a few days subsequently Downey transmitted a message on the extravagance of conducting Indian wars on the plans adopted by Weller and the quartermaster and adjutant-general, William C. Kibbe, acting under his instructions. He said that a very few expeditions, conducted on such plans, would bankrupt the state.³

A few days afterwards the subject of Indian disturbances came

¹ Senate Journal, 1860, 142, 143.

² Senate Journal, 1860, 153.

³ Senate Journal, 1860, 142, 143, 153; Assembly Journal, 1860, 154, 165.

up again. Most of the expeditions, and notably that conducted by Kibbe in 1859, known as the Tehama county war, for which he presented bills amounting to seventy thousand dollars, were undertaken in response to petitions and complaints about Indian depredations. It may readily be imagined how easy it was to get up such petitions; and how a too-compliant governor could be deceived into paying too much attention to them. Downey showed a disposition not to trust them implicitly. Much the same kind of complaints that had been made to Weller about the Tehama county Indians in 1859 were made to Downey about the Mendocino county Indians in 1860. It was said, and members of the legislature appeared to indorse the reports, that they were "exceedingly hostile, committing depredations of a serious character, murdering and troubling the settlers" at Round valley. Downey immediately, instead of sending troops, addressed General Newman S. Clark, then in command of the Pacific division of the United States army at San Francisco, on the subject; and he was more than surprised by General Clark's answer that he had troops sufficient and ready to move to any point where their services might be needed for the protection of life or property, and that he had an officer with a detachment of troops at Round valley at that very time; but that not a word had reached him about any hostile movement among the Indians or a single murder.¹ And in further answer, General Clark, a few weeks afterwards, transmitted a report from Edward Dillon, lieutenant in command at Round valley, to the effect that not only were the reports of Indian depredations in that quarter entirely without foundation but that the Indians were in much more need of protection than the whites. He said that there were certain parties, having interests in Round valley, whose aim it was to exterminate the Indians, and that a company of volunteers had been ranging in the vicinity all winter and in connection with the citizens of the valley engaged in the indiscriminate murder of all the Indians whose misfortune it had been to fall in with them. He added that the presence of his detachment had been the saving of the Indians; for he was fully persuaded that nothing but fear had prevented the lawless citizens of Round valley

¹ Assembly Journal, 1860, 165, 210, 211.

from destroying, root and branch, the establishment of the Indian department.¹

The company of volunteers, referred to by Lieutenant Dillon, was a squad of twenty men, called "Eel River Rangers," which had been raised in Mendocino county in September, 1859, under authority from Governor Weller. It was under the command of Captain W. S. Jarboe. Weller had been informed, and without doubt believed, that the Indians had been committing depredations; and, in his instructions to Jarboe, he directed him to confine his operations strictly against "those who are known to have been engaged in killing the stock and destroying the property of our citizens." A few weeks later, Weller again wrote to Jarboe to the effect that an indiscriminate warfare would not be justified by the facts in his possession, and that the object of the organization of his company was "to protect the lives and property of the citizens in certain localities and not to wage a war of extermination against the Indians." Notwithstanding these instructions, it appears that Jarboe and his men, instead of acting on the defensive, waged a war of extermination against the Indians, which became known as the "Jarboe war." It was so indiscriminate and unjustifiable as to provoke a revulsion in the public mind; and on January 5, 1860, just before he went out of office, Weller ordered the force to be disbanded. It became Downey's duty, when he became governor, to bring the whole subject before the legislature; and, in response to his messages, that body, after pronouncing the "Jarboe war" as it had been carried on without cause or justification, came to the conclusion that the United States army, and not the legislature of California, was the proper and legitimate source to apply to for aid and protection against Indian hostilities; that it was only in case of failure on the part of that army to act that the legislature should make any appropriation for the suppression of such hostilities, and that so long as it would make appropriations, just so long would hostilities continue and the legislature be called upon for newer and newer appropriations. The result was a stop to the long-continued abuse of state appropriations for the suppression of

¹ Assembly Journal, 1860, 165, 210, 216, 302, 303.

Indian hostilities or, more properly speaking, for exterminating those of the Indians who still remained unslaughtered. In 1861 Downey stated that he had loaned arms to some of the citizens of Nevada, who had become involved in an Indian war, but that, so far as California was concerned, no troops had been called out by him for Indian war purposes. It was true that requisitions had been made upon him; but he had found upon investigation that the reports of depredations were exaggerated or untrue; and he knew that most of the expeditions, which had been gotten up for the suppression of alleged Indian aggressions, were mere forays for the indiscriminate slaughter of defenseless women and children.¹

Next in order was a revival of the proposition to dismember the state. It took the shape of a resolution, introduced by Daniel Rogers into the assembly in January, 1860, to lop off the six southern counties and form a separate territorial government for them. The resolution was adopted in the assembly by a vote of thirty-seven ayes to twenty-six noes. And action favorable to the same proposition was taken in the senate. But there the scheme stopped; for, before anything further could be done, the war of secession came on and any further talk of concession to the south would have been regarded as not only useless but treasonable.² At the same time that talk of dividing the state was thus going on, the question of a state capitol came up and was in effect decided and determined. Though Sacramento had been fixed upon as the capital city, there was no suitable building there for the capitol. That city claimed that it had donated the necessary ground for the erection of such structures as might be needed and that it had offered the use of the building, then used as a capitol, free of expense, though the state saw fit to pay rent for its use. It also appeared that the state had already in 1856, as before shown, decided upon the erection of the capitol at Sacramento, and that, though the act passed for that purpose had been pronounced unconstitutional, its unconstitutionality for other reasons did not affect the deliberate expression of will on the part of the state to

¹ Assembly Journal, 1860, 318-325; Senate Journal, 1861, 38, 39.

² Assembly Journal, 1860, 155, 412, 413; Senate Journal, 1860, 415.

accomplish the object contemplated or the propriety of its accomplishment. On the other hand, Santa Clara county claimed that the original removal of the capital from San José was unconstitutional, and so with every subsequent removal. But as soon as the question was thus resuscitated, San Francisco renewed its offer of any public square in the city that might be selected, with the exception of the plaza; and it further offered to appropriate one hundred and fifty thousand dollars towards the construction of buildings. Jacob C. Beideman and Robert C. Page, on their own behalf, offered four blocks of land, bounded by Van Ness avenue, Eddy, Gough and O'Farrell streets, and to plank those streets and connect them by two planked streets with the other planked streets of the city. At the same time Oakland offered ten acres of ground in any part of that city that might be selected. These various offers, however, did not appear to have any effect; and the committee in whose hands the subject rested decided in favor of Sacramento. The final result was the passage on March 2, 1860, of a bill for the construction of the state capitol at Sacramento. Under that act, which expressly provided that the entire cost of the building should not exceed five hundred thousand dollars, a start was made in the erection of the granite structure in the capital city, which before completion cost several millions but is famed far and wide as one of the handsomest of state capitols.¹

Contemporaneous with the start of the state capitol was another notable event, which attracted much attention and was of very great importance to the state. This was the establishment of the "pony express." An overland mail stage line, connecting San Francisco with St. Louis and running by the southern or so-called Butterfield route through Arizona, New Mexico, Texas and Arkansas, had been established in September, 1858, and mail stages left each end of the line regularly twice a week; but the time required to make the trip was about the same as that needed on the ocean trip by mail steamers; and nothing in the way of time was gained, except that an overland mail arrived eight times a month, while a steamer mail came

¹Senate Journal, 1860, 394-401; Assembly Journal, 1860, 311, 312, 459-466; Stats. 1860, 128.

in only twice a month. The regularity and safety of the service by the southern route suggested that a mail could be carried on horseback from St. Joseph in Missouri, the most westerly point then reached by eastern railroads, and on an almost direct course to Sacramento on the Pacific side with equal safety and in much less time. The distance from one point to the other was about nineteen hundred miles, which at an average speed of eight miles an hour could be made in ten days. A company or rather partnership, known as Russell, Majors & Waddell, then engaged in running a daily stage between the Missouri river and Salt Lake city, was induced, particularly by the representations of United States Senator Gwin, to undertake the enterprise. Stations already existed every ten miles as far west as Salt Lake; and proper arrangements were made for stations west of Salt Lake about every twenty-four miles, which was to be the limit of each horse's travel at a heat, and for relays. At each station, a fresh horse was to be ready to start on with the mail-pouch the moment it arrived and could be handed over either to the same rider or to a new one—one man sometimes riding a couple of hundred miles. There were to be two mails a week, each way; but not much more than two hundred letters could be carried at a time; and usually a much smaller number was taken. To save weight, tissue paper was ordinarily used; and, on account of the limited traffic and great expense, the postage was fixed at five dollars for each half ounce.¹

Everything being arranged, the first horseback or pony mail left Sacramento on the Pacific side and St. Joseph in Missouri on the other side on April 3, 1860. The mail from St. Joseph coming west passed from rider to rider, by the way of South Pass, Salt Lake, Humboldt river and Carson valley, to Sacramento, which it reached on April 13. The news of its coming was hailed with great enthusiasm; and both houses adjourned in honor of and to welcome it.² It came in time for the regular afternoon steamboat; and the horse and rider with the mail-bag, just as they had come into Sacramento, took passage on the boat

¹Seventy Years on the Frontier (Alexander Majors' Memoirs), Chicago and New York, 1893, 173-185; Hittell's San Francisco, 269, 324.

²Senate Journal, 1860, 649; Assembly Journal, 1860, 666, 667.

and arrived at the wharf in San Francisco at one o'clock on the morning of April 14. There they were met by an enthusiastic crowd with bands and torches; a procession was formed; and, with music and continuous cheers, they were escorted to the post-office. The quickest time ever made between San Francisco and New York by the overland mail over the Butterfield route was twenty-one days; the pony express shortened this time to ten days and kept up the service in schedule time till superseded by the progress of the transcontinental railroads and telegraph lines. It required, to do its work, nearly five hundred horses, about one hundred and ninety stations, two hundred station-keepers and eighty riders. Each rider usually rode three horses or about seventy-five miles, though sometimes much greater distances. One rider, named Robert H. Haslam, usually known as "Pony Bob," on one occasion made a continuous ride of three hundred and eighty miles within a few hours of schedule time; and another, William F. Cody, who afterwards became famous under the name of "Buffalo Bill," rode in one continuous trip three hundred and eighty-four miles, without stopping except for meals and to change horses. The pony express in December, 1860, carried President Buchanan's last annual message from the Missouri river to Sacramento in a little over eight days and in March, 1861, President Lincoln's message over the same route in seven days and about seventeen hours, which is supposed to have been the quickest time, considering distance, ever made on horseback. With such riding, the regular time for letters between San Francisco and New York was reduced to thirteen days; but for news it was brought down to nine days—that being the time between the telegraphic stations at St. Joseph in Missouri and Carson City in Utah, which was by that time in direct telegraphic communication with San Francisco. A short time before the establishment of the pony express, a telegraph wire had been run from San Francisco to Stockton and up through the San Joaquin valley and over the mountains and across the Mojave desert and on to Los Angeles, with the object principally of supplying the San Francisco newspapers in advance of the arrival of the overland stage; but the pony express at once destroyed its use for such

purpose and for the time superseded every other means of rapid communication.¹

Meanwhile several other matters, illustrative and very significant of the times, with which Downey had more or less connection, came up in the legislature of 1860. In February he recommended that highway robbery should be made a capital offense; but neither that legislature nor any subsequent one has agreed with him. Soon afterwards, John J. Warner of the assembly committee on public morals reported against a bastardy act; and no act of that kind has so far obtained place on the statute-book.² A bill was passed and approved by Downey to pay R. A. Thompson and Ferris Forman for services in going to Washington and endeavoring to induce the president to precipitate the United States troops upon the committee of vigilance in 1856. Another bill was passed, and approved by Downey to settle the state prison muddle for two hundred and seventy-five thousand dollars, as before stated. A bill which might have been of immense importance, if it could have been properly drawn and executed, was presented in the senate by R. A. Redman against "lobbying and log-rolling;" but after passing the senate and reaching the assembly, on motion of Thomas B. Shannon, the word "log-rolling" was rejected; and subsequently, on motion of A. J. King, the enacting clause was stricken out by a vote of forty-one ayes to fifteen noes.³ But the matter which caused the most excitement and made the most noise at the session of 1860 was the San Francisco bulkhead. This scheme, gotton up chiefly by persons who had made money out of the old wharves and had organized under the name of the San Francisco Dock and Wharf Company, was, as already stated, to build a stone bulkhead on the water front, maintain possession and control of it and have the exclusive privilege of collecting wharfage and tolls for fifty years. It had been agitated in several previous legislatures and had been growing in strength every year. It was in the hands of adroit managers and backed by

¹ Majors' *Seventy Years on the Frontier*, 173-185; Hittell's *San Francisco* 324, 325.

² *Assembly Journal*, 1860, 384, 389.

³ *Senate Journal*, 1860, 359, 407, 687, 796; *Assembly Journal*, 1860, 384, 389, 588, 642, 682.

plentiful capital. It was true that Latham, fresh from the United States custom-house and intimate relation as collector of the port with the mercantile and shipping interests, had spoken against it in his inaugural; but, notwithstanding his disparaging remarks, the project in the shape of a bill, introduced into the senate by Isaac S. Titus of El Dorado county, passed that house with a majority of sixteen to thirteen and the assembly with a majority of forty-three to thirty. Several assemblymen from San Francisco favored it; while the others and all the senators were violently opposed, and the community in general, supported by the most influential newspapers, condemned it and its advocates in unmeasured terms. Some of the bitterest speeches ever made in the California legislature arose out of the controversy—among which may be particularly mentioned one by Henry Edgerton of Napa county, who favored the bill, in answer to newspaper attacks upon him on account of his advocacy of it.¹

It appears to have been supposed by those who favored the bill that Downey would approve it. But if so, they were mistaken. On April 16, two days after it had been placed in his hands, he vetoed it. In his veto message, he said, "After giving this bill the most careful consideration in all its details, I am led to the irresistible conclusion that its provisions are not only in conflict with the constitution and the principles of natural justice, but that the measure as a whole is calculated to work irreparable injury to our commerce, internal and external, of which San Francisco is and must forever remain the metropolis." Upon the receipt of the news of the veto, the city of San Francisco grew almost wild with joy; and for the time, and in that quarter at least, Downey suddenly became the most popular man in the state. Never, since the defeat of the San Francisco water-front-extension scheme by the casting vote of Lieutenant-governor Purdy in 1853, had there been anything of the kind—so sudden, so spontaneous and so general. Not long afterwards, when Downey visited San Francisco, he was welcomed with a great popular ovation. About two weeks subsequent to the defeat of the bill by Downey's objections, an effort was made in the senate to pass it over the veto; but the attempt failed by a

¹ Senate Journal, 1860, 352, 582-651; Assembly Journal, 1860, 602, 663.

vote of fifteen to fifteen; and from that time the city of San Francisco felt more confidence in its future advance and prosperity than it had for several years. And Downey might have had almost anything he asked of it, if he had only managed to steer as clear of entanglement on the Union question as he had on the bulkhead.¹

Although the Union question was not yet presented in such shape as to be considered of vital importance, it was nevertheless felt, as it were in the air, to be so. Up to that time California had given decided majorities in favor of the party that favored slavery. But at the presidential election of 1860, when the line came to be drawn with great distinctness between the north and the south, between freedom and slavery, between union and secession, California broke its old Democratic record and wheeled into line as a Republican state, strong on the side of the Union. An effort had been made to bring together the two wings of the Democratic party; but the Lecompton wing, which favored slavery and preferred John C. Breckenridge for president, could not or would not harmonize with the anti-Lecompton wing, which favored squatter-sovereignty and preferred Stephen A. Douglas for president. In July, when news came of the split in the Democratic national convention and the nomination of Douglas by one wing and of Breckenridge by the other, it produced great excitement and consternation. Downey and many other old-time Democrats declared for Douglas; while Weller, Gwin, Latham, almost all the federal office-holders and various others supported Breckenridge. Latham, who seems to have still imagined that he wielded a mighty influence, thought proper to issue a lengthy address, in which he avowed his adherence to Breckenridge, not because he claimed him to be the regular nominee of the Democratic party but because he agreed with the political principles advocated by him; and he added that he opposed Douglas because he did not agree with him, and not for any other reason. In the meanwhile news had also come of the nomination by the Republican national convention of Abraham Lincoln and Hannibal Hamlin as president and vice-president; and in a very short time after the canvass opened, it was perfectly

¹ Senate Journal, 1860, 668-672, 800; Hittell's San Francisco, 323.

well understood that the struggle, call it by whatever name they might and without reference to individuals, was to be between union and threatened secession.¹

The presidential campaign of 1860 in California was a memorable one. The people were thoroughly aroused and many able speakers took part in the conflict. There was not so much personal vituperation as in the campaign of the year before; but there was more political bitterness, for the reason that the greater portion of the Democracy, which had hitherto trained with the chivalry, had gone over to the anti-Lecompton or Douglas side; and each wing hated the other even more than it hated the Republicans. Besides, the killing of Broderick, which was attributed to the chivalry, was still fresh in the minds of the people, and the influence it produced was powerful. Though Broderick was dead, his spirit was alive and worked greater wonders than he himself could have worked if he had lived. It was in this campaign that Edward D. Baker pronounced, in favor of freedom and the Republican party, what was supposed to be the greatest speech ever delivered in California. Baker had distinguished himself as an orator on various former occasions and particularly at the celebration in San Francisco of the laying of the Atlantic cable and at Broderick's funeral. He had been defeated in 1859 as a candidate for congress; after which he had gone to Oregon and been elected United States senator from that state; and he was on his way to Washington when called upon to speak. It was in this speech, on October 29, 1860, that he uttered the words, "Where the feet of my youth were planted, there, by Freedom, my feet shall stand. I will walk beneath her banner. I will glory in her strength. I have watched her, in history, struck down on a hundred chosen fields of battle. I have seen her friends fly from her. I have seen her foes gather round her. I have seen them bind her to the stake. I have seen them give her ashes to the winds, regathering them again that they might scatter them yet more widely. But when they turned to exult, I have seen her again meet them, face to face, resplendent in complete steel and brandishing in her strong right hand a flaming sword, red with insufferable light. I take cour-

¹ Davis' Political Conventions, 110-116.

age. The people gather round her. The Genius of America will at last lead her sons to freedom."¹ On the other hand, and about the same time, John B. Weller delivered a speech for the chivalry at San José, in which he said, "I do not know whether Lincoln will be elected or not. But I do know that, if he is elected and if he attempts to carry out his doctrines, the south will surely withdraw from the Union. And I should consider them less than men if they did not."²

At the election, which took place on November 6 and resulted, as has been stated, in favor of the Republican party, the chivalry, that had enjoyed such a phenomenal triumph in 1859, was completely beaten. Its vote in the state amounted to only about thirty-four thousand, while Douglas received thirty-eight thousand and Lincoln nearly thirty-nine thousand. On the Union question, as it then stood, the Douglas vote was to be counted with the Republicans; and there was also a vote of a little over nine thousand for John Bell and Edward Everett, who had been nominated as president and vice-president by a party that called itself the Union party. In a short time afterwards, when the chivalry, having been defeated at the polls, rebelled and appealed to arms, a number of the so-called Union as well as of the Douglas party returned to their old principles; they at least gave no aid to but talked against, and in fact opposed, those who saved the Union. But up to the breaking out of the war—which compelled men to show themselves in their true colors—all, except the avowed chivalry, talked Union.³

When the new legislature of 1861 assembled on January 7, it was, or it professed to be, decidedly Union. At the previous session, when Downey succeeded Latham in the gubernatorial chair, Isaac N. Quinn of Tuolumne county had been president of the senate and in effect lieutenant-governor. But at the beginning of the session of 1861, Quinn's term having expired, the place was filled by the election of Pablo De La Guerra of Santa Barbara. De La Guerra was one of the old native Californian stock of Spanish blood, a man of considerable culture

¹ Hittell's *San Francisco*, 327, 328; *Bench and Bar in California*, by Oscar T. Shuck, San Francisco, 1888, 18.

² *Davis' Political Conventions*, 127.

³ *Davis' Political Conventions*, 127.

and refinement, who had become a citizen of the United States in 1848 by virtue of the treaty of Guadalupe Hidalgo. He gave expression to his feelings about the Union in a few remarks which he made to the senate upon taking his seat as its presiding officer. "Allow me," he said, "to express the hope that the session upon which we are entering will be characterized by industry, harmony, wise legislation and, above all, by such a marked devotion to the Union that our young state shall help to reproduce, in these days of discord, that fraternal spirit of 'amity, mutual deference and concession' in which the government of the Union was established and by which alone it can be kept from utter dissolution."¹ At the same session of 1861, on January 18, Downey presented his first regular annual message. He addressed his introductory remarks to the extravagance, bad management and dishonesty of former years, which had left an indebtedness of over four millions of dollars, for which there was nothing to show except an unfinished state prison and an incomplete and indifferent building for the insane patients of the state. There were no railroads, no canals, no state capitol and no seminary of learning—no equivalent in fact for the vast public incumbrance that had been created. It was true that a brighter day seemed to be dawning; we were reducing our expenditures to our income; we were promptly paying the interest upon our bonds, and a large sinking fund was being annually laid by for the redemption of the same; and our securities were being sought for by capitalists as an investment inferior to none in the American Union—all of which augured well for our future stability and material prosperity. There was a surplus of over six hundred and forty-three thousand dollars in the treasury; but at the same time there were extraordinary expenses to be met—among which were a ruinous contract for the support of the state prison, expensive Indian war debts, expenses of the state capitol building, of the state reform school at Marysville, of the deaf, dumb and blind asylum at San Francisco, of the orphan asylums and other charities, of the boundary survey and of the geological survey.²

¹ Senate Journal, 1860, 179; Senate Journal, 1861, 8.

² Senate Journal, 1861, 29-35.

He called attention to the fact that a bill for a constitutional convention had been defeated by the people for the third time and expressed an opinion that the old constitution of 1849 was a good one in the main and at most needed only a few amendments. There ought, for instance, to be two more supreme justices; there ought to be only biennial sessions of the legislature, and there ought to be a repeal of the personal liability clause in reference to corporations. He maintained that taxation was intolerable and that fees ought to be reduced—or abolished. He complimented in high terms the operation of the San Francisco consolidation act and especially in respect to reducing municipal expenses. "I cannot see," he said, "what justice there can be in a county clerk, sheriff or tax collector getting emoluments amounting to from ten to thirty thousand dollars per annum, while our chief justice and chief magistrate get only six thousand dollars." Was it not absurd for tax collectors and others, who did nothing, to receive enormous fees for doing nothing? He also called attention to the inadequacy of the laws concerning poll taxes and suggested that no one should be allowed to vote, who did not pay his poll tax. He likewise favored a reduction of the number of representatives and the abolition of mileage, allowing only for actual expenses. He recommended a short session and a few laws. And in conclusion he maintained that the Union was in imminent danger of disruption. He felt deep solicitude, he said, "in the perpetuity of that Union, transmitted to our care by the fathers of the revolution for the benefit of succeeding generations, for the security of civil and religious liberty and the honor, glory and power of the American name. You should by joint resolution," he continued, "express your disapprobation of all measures with which any portion of the confederacy may be justly dissatisfied or their constitutional rights in the humblest degree affected. The nullification of the fugitive slave law and the passage of personal liberty bills by many of the sovereign states cannot be viewed in any other light than subversive of all amicable relations between those states and that portion of the confederacy interested in slave property. These enactments are unconstitutional, are founded upon injustice and bad faith, and are in violation of the federal compact. The

authors of them have been forewarned of their evil results and now that they see the danger, it is hoped that a sense of returning justice and the patriotism, that so eminently distinguished the citizens of those states in the earlier days of the republic, will cause them to repeal these obnoxious statutes and by this means restore peace to the country and permanency to the Union."¹

Downey's unionism, it was very plain, was not of the kind by which the Union could be preserved. It meant continued submission and subserviency to slavery and the slave power, which had hitherto dominated the country while the advance of the age had outgrown it. It meant that the area of slavery must be extended so as to make it equal to that of freedom or that the area of freedom must be restricted so as not to allow it to exceed that of slavery. It meant that the north, which under the influence of freedom was far outstripping the south, should not be permitted to obtain or enjoy the ascendancy. It meant that the march of civilization must be arrested, because slavery was losing or would lose its predominance. It was obvious that in the irrepressible conflict that was coming on between union and secession, such unionism was more on the side of secession than on the side of the Union. It cannot be said that Downey had any special love for slavery or the slave power; on the contrary, he had to a very considerable extent broken loose from the chivalry and was what was called an anti-Lecompton Democrat; but, unfortunately for himself, he was still hampered with old-time doctrines when slavery ruled unquestioned, and he did not receive and welcome soon enough the new light of freedom which had arisen in the land. He might have advocated the preservation of the Union without giving up everything to slavery; he might have done so easily, without committing himself to abolition; and had he done so, he could not have asked for anything from the people of California which they would not willingly have given him. But, as it was, he failed to see and to seize what was within his grasp; and the lost opportunity never returned. After his message, he was not as much in popular estimation even as he had been before he mounted into favor by his veto of the bulkhead bill.

¹Senate Journal, 1861, 36, 37, 40-43.

It is a remarkable circumstance, and strongly indicative of the sagacity and far-seeing intellectual ability of Broderick, that he should have perceived and placed himself so early on the side of the advancing spirit of the age. Whatever fault might be found with him otherwise, there could be no doubt that upon this, the most vital of all questions, he had taken a stand that could not be mistaken and that it was unreservedly on the side of Union in the proper sense of the word. It was for this reason, little as some of his friends and adherents seem to have appreciated it, that he had come to be looked on as a hero and martyr; that his memory was treasured and cherished, and that his name, when mentioned, suggested something extraordinarily great and grand in character, aroused enthusiasm and served as a rallying cry under which people could march triumphantly forward on the line in which public affairs were irresistibly tending. This became very evident upon the introduction into the assembly of 1861 of a proposition to declare untrue and in effect expunge from the legislative journals the resolution, adopted in 1859, censuring Broderick for alleged violation of instructions in reference to voting for the Lecompton constitution and demanding his resignation. The new proposition, which came up in the form of a concurrent resolution, declared that the condemnatory resolutions were not only not true in fact but that they were not sanctioned by the people of the state; that Broderick had voted against Lecompton before any instructions had reached or could reach him; that he had therefore not only not disobeyed instructions but that he had truly and properly represented the will of the people of California and of the United States, who by a very large and decided majority had indorsed his course; that he had approved himself an honest, able and faithful representative, and that the resolutions of 1859 were "unjust to his character while living and derogatory to the honorable and patriotic fame which a true and faithful record of his acts will always accord to his memory." The so-called expunging resolution was adopted by a vote in the senate of nineteen ayes to eleven noes and in the assembly by forty-one to thirty-two.¹

¹ Assembly Journal, 1861, 172; Senate Journal, 1861, 69, 70, 826, 827; Stats. 1861, 670, 671.

The same tendency was manifested by the introduction at the same session of 1861 of numerous resolutions on the state of the Union, most of them very strongly in favor of maintaining it at all hazards. There was one, however, presented in the senate by J. Logan of Tehama county, which was intended as an indorsement of a plan of settlement of national troubles proposed by John J. Crittenden of Kentucky. It somewhat curiously mixed up an approval of the patriotism of Stephen A. Douglas with that of John C. Breckenridge and condemned the doctrine of coercion which by this time had begun to be talked about and was destined to be the dividing line between the true Union man and the false Union man—it soon becoming evident to all thinking persons that without coercion there could be no Union and in fact no government. Logan's proposition was in the course of a few days so changed by amendments that it lost its character and amounted to nothing, and particularly so after the news came that the south had taken up arms. Very soon after that event occurred and the fact was recognized by everybody that any further talk of conciliation or compromise was useless, all the resolutions in reference to the state of the Union were replaced by a short but positive and unmistakable substitute, offered in the senate by S. H. Chase of Nevada county, which was adopted by an almost unanimous vote on May 17, 1861. It declared that the people of California were devoted to the constitution and union of the United States and would not fail in fidelity and fealty to that constitution and union in the hour of trial and peril; that California was ready to maintain the rights and honor of the national government at home and abroad, and at all times to respond to any requisition that might be made upon her to defend the republic against foreign or domestic foes.¹

Meanwhile the term of William M. Gwin as United States senator from California had expired on March 3, 1861; and on March 9 the legislature met in joint convention to fill the vacancy. The most prominent candidates for the position were James A. McDougall, an anti-Lecompton Democrat, and John Nugent and John B. Weller, chivalry Democrats. There were twenty-two ballots. On the first McDougall received twenty-seven votes,

¹ Senate Journal, 1861, 150, 196, 841; Stats. 1861, 686.

Weller twenty-seven, Nugent nine and Timothy G. Phelps, who was named as Republican candidate, twenty-three; on the twenty-second ballot, which took place on March 20, out of one hundred and thirteen votes McDougall received fifty-six, Nugent forty-seven and Weller six.¹ The president of the convention, supposing that McDougall had received a majority of the votes, announced his election; but a few days subsequently it was resolved that there had been no choice; and McDougall expressly relinquished all claim to an election. Afterwards on April 2 a new election took place and on the first ballot McDougall received fifty-seven votes, Nugent thirty-nine and Weller four, whereupon McDougall was announced duly elected for a term of six years from March 4, 1861.² In the course of the contest a quarrel occurred between Daniel Showalter, assemblyman from Mariposa county, and Charles W. Piercy, assemblyman from San Bernardino. It appears that Piercy, who was a Union Democrat, had been in the caucus that nominated Nugent, but afterwards announced that he would not vote for him because he had found that he was not sound on the Union question. Showalter, who though born in Pennsylvania was in favor of slavery and secession, took exception to Piercy's declaration. Subsequently Piercy voted for the Union resolutions and objected to Showalter's being allowed to explain his vote against them. The result was that Showalter insulted Piercy; and Piercy challenged him. The hostile meeting took place on the afternoon of Saturday, May 25, 1861, near the residence of Charles S. Fairfax, about three miles west of San Rafael in Marin county. The seconds of Piercy were Henry P. Watkins and Samuel Smith; those of Showalter, Thomas Hayes and Thomas Laspeyre. The weapons were rifles at forty yards distance. The first fire was ineffective. Showalter demanded another and, on the second fire, shot Piercy in the mouth and killed him.³ As in the Broderick and Terry duel and also in that of Johnston and Ferguson, it was the anti-chivalry man that was killed. The fact occasioned remark. And on this account, as well also as because of an

¹ Senate Journal, 1861, 242-363.

² Senate Journal, 1861, 513-519.

³ Morning Call, May 26, 1861.

advance in civilization, this was the last of the political duels in California.

Several matters of more than ordinary public importance, in addition to those mentioned and those which will be mentioned in other connections, occurred during Downey's administration. In April, 1860, an act had been passed for a geological survey of California and appointing Professor Josiah D. Whitney state geologist. In December, 1860, Whitney commenced his work and in 1861 made his first report to the legislature, which was well received.¹ On May 8, 1861, the law relating to common property of husband and wife was so changed that, instead of being divided in case of the death of either spouse between the survivor and the descendants of the deceased, it was now provided that on the death of the wife the entire common property should go to the husband; and this in substance, with some further privileges on behalf of the husband which are supposed to be beneficial, continues to be the law of the state.² On May 15, 1861, the corner-stone of the state capitol building was laid at Sacramento.³ On May 20, 1861, a Sunday law was passed, that occasioned a number of prosecutions for keeping open business houses on Sunday and caused considerable annoyance without any corresponding good. The supreme court, which had previously declared such a law unconstitutional, changed its opinion and held it valid; but the public opinion of the people of the state was opposed to it; and it became in substance a dead letter and was afterwards expressly repealed. At no time has the broader-minded portion of the community ever been in favor of it.⁴ A somewhat curious complication, which occasioned much noise, arose between the two houses of the legislature towards the end of the session of 1861. One Samuel Wittgenstein, who was employed as a copyist by the secretary of the senate, made certain charges of corruption against an assemblyman. A committee of the assembly thereupon charged him with attempting to blackmail and demanded his dismissal from the public service. The senate in response ordered an investigation and invited the

¹ Stats. 1860, 225; Senate Journal, 1861, 555, 648.

² Stats. 1861, 310.

³ Senate Journal, 1861, 809.

⁴ Stats. 1861, 655; *Ex parte Andrews*, 18 Cal. 678.

assembly to send a representative to conduct the prosecution and prove the charges. This the assembly refused to do and returned the communication to the senate, which thereupon refused to accede to the request of the assembly. Fortunately the disagreement was on a matter that was rather unclean and unsavory than dangerous or vital. To all appearance Wittgenstein's charges may not have been untrue; but it was questionable whether Wittgenstein himself was trustworthy or reliable.¹

In the course of the session of 1861, Downey exercised the veto power, with which he had acquired so much reputation in 1860, on several occasions. The most notable of them was in reference to the trial of a person of some prominence, named Horace Smith, for murder. Smith, on January, 1861, had shot and killed a man, named Samuel T. Newell, on the open street in San Francisco and had been indicted and held for trial. Appearances were very much against him; and it is not unlikely that he would have found it difficult to escape punishment, as there was much public feeling on the subject. He applied to the San Francisco court for a change of venue; but his motion was denied; and his friends then, being unable otherwise to accomplish their purpose, introduced a bill in the senate to change the place of trial from San Francisco to Placer county. The bill having passed both houses, the governor vetoed it on the ground that it was unconstitutional, whereupon the houses passed it over the veto. A certified copy of the act as passed was next presented to the court and the motion to change the place of trial renewed; but the court denied it on substantially the same ground of unconstitutionality. Smith thereupon applied to the supreme court for a mandamus to compel the change of venue as directed; and the supreme court decided that the bill was not unconstitutional and ordered the change to be made. The result, as was expected, was an acquittal of Smith and a disappointment of the public.²

Downey's political career, so far as office-holding was concerned, closed with the end of his gubernatorial term in 1862.

¹ Assembly Journal, 1861, 744, 777, 778; Senate Journal, 1861, 684, 724, 855-860.

² Senate Journal, 1861, 197, 198; Assembly Journal, 1861, 375; Stats. 1861, 47, 48; *Smith vs. Judge of Twelfth District*, 17 Cal. 547.

He was a candidate before the anti-Lecompton or so-called Union Democratic convention in 1861 for re-election as governor; but, though receiving a large vote, he did not obtain the nomination. On January 9, 1862, upon retiring from office, he presented his last message. In this document he spoke of the good financial condition of the state and advised that the direct tax of a little over a quarter of a million of dollars, that had been levied by the United States upon California for war purposes, should be collected by the state through its own officers instead of submitting to federal officials. He spoke of the various state institutions as flourishing, with the exception of the state insane asylum which he pronounced "a miserable failure." He said he had made a sparing use of the pardoning power and believed he had not exercised it except in cases where it did good. He thought the supreme court reports entirely too costly. He was severe on the extravagance practiced in what was called reclaiming swamp lands by frittering away the funds in salaries and wages instead of on levees and practicable work. He had something to say on Indian hostilities and coast defenses and spoke of the requisitions of the general government for the state contingents—one on July 14, 1861, for one regiment of infantry and five companies of cavalry, and one on July 24, 1861, for four regiments of infantry and one regiment of cavalry. These had been quickly raised and equipped under Brigadier-general Edwin V. Sumner, then in charge of the Pacific division of the United States army, without cost to the state and consisted of the best material. As to the general condition of affairs, he spoke, not as might have been expected of a "Union governor" and still less of a "war governor," but in a half-hearted way. He said that war had come; that there had been no need of it, perhaps; but it had come and it was the duty of the state to stand by the congress of the United States and, if necessary, shed blood in their support. As for himself, though entertaining political proclivities at variance with the administration, no one would respond more promptly to its call for aid. It was very plain to him, however, that, if the country was to be defended or kept republican, there would still have to be a union or alliance with the southern states. But he deemed it necessary

and proper to speak of and deprecate what he called sectional pride, referring to the action of the north in resisting the south, and thought that there would have to be compromise and concession. He intimated that affairs would be different, if this policy had been pursued. But things had come to a sorry pass. Emancipation was threatened. It was very certain, in his opinion, that the Republican party was not to restore the Union.¹

After relinquishing his office of governor, Downey retired to his residence at Los Angeles and devoted his time chiefly to the banking business and the care of real estate, of which he owned a large quantity in Los Angeles county. He became an active capitalist and did much towards the development of the southern portion of the state. In 1863 he was nominated and ran for governor, but was defeated by Frederick F. Low. Subsequently he was frequently named in the councils of the Democratic party, which always recognized him as one of its most prominent and trustworthy members; but, as before stated, he did not after 1862 hold any public office. In person Downey was well formed, a very little below medium height, ruddy of complexion and active in movement. He was a pleasant man, easily accessible and assumed no airs. He died at his home in Los Angeles on March 1, 1894; and nearly everybody had a kind and good word for him.

¹ Senate Journal, 1862, 31, 32.

CHAPTER XI.

STANFORD.

WHATEVER talk may have been made by such politicians as John B. Weller and a few others about a Pacific republic—all of which was plainly in aid and encouragement of slavery and secession—it can hardly be said that the people of California in general considered such a thing as the disruption of the Union possible. They could not, and they did not, believe that the great body of the people of the southern states would allow themselves to be led or driven into taking up arms against the federal government. There can be little or no question, if secession had succeeded, that California would have adhered to the north; the community at heart was strongly Union; and such a thing as setting up a new and independent government was no more contemplated than joining and making common cause with the south. There were from time to time, particularly before the Pacific coast sent up its voice in clear and unmistakable tones in favor of the Union and sustaining it against any and all attacks, rumors of plots and conspiracies of various kinds to seize the forts and take military possession of the country for the benefit, direct or indirect, of the rebellion. But, though there were some hot heads and foolish schemers, who might have made rash attempts, nothing of that character was put in execution; nor, considering the real temper and feeling of the community, could it have succeeded.

The military commander of the department of California at the time was Brigadier-general Albert Sidney Johnston, a native of Kentucky. He was a man of marked ability and good repute. He had been transferred from the command of the Texas department to that of the Pacific in the early part of 1861, very soon after South Carolina passed its ordinance of secession. About

the same time, it being learned that Buchanan's secretary of war, John B. Floyd, had stocked the southern arsenals with arms and ammunition in evident preparation for the rebellion and that, as a part of the same transaction, he had sent a large quantity to California, it was not known whether Johnston could be entirely trusted. One of the rumors above mentioned in regard to seizing California for secession was that Johnston had been sent out for the express purpose; that Charles Doane, then sheriff of the city and county of San Francisco, who had come from New Orleans and was supposed to favor secession, was offered the command of the movement in San Francisco, and that Doane, instead of entering into the plan, made immediate arrangements with David Scannell, chief engineer of the fire department, to call out a thousand armed firemen to put down any such movement in case it were made. There is no reason to place any credence in the story, though it is possible that Doane may have been spoken to and that he may have consulted with Scannell about calling out such firemen as belonged also to military companies in case of necessity. General Johnston, when consulted upon the subject, denied knowledge of any such plot; and certainly nothing of the kind could have been contemplated without his knowledge. But without reference to his knowledge or how he might have been disposed to act, it was known that his sympathies were with the south and it was thought best by the new Republican administration at Washington to immediately supersede him in his command by a man who could be relied upon for the Union under any and all circumstances. The person chosen was Brigadier-general Edwin V. Sumner, who was ordered to proceed to the Pacific at once.

It seems to have been intended that Sumner should reach California without his coming being known there in advance; and, with that object in view, he boarded the Pacific mail steamer after it had left its dock in New York. Sumner arrived in San Francisco on April 24, 1861, and immediately called upon Johnston, produced his credentials and demanded the command of the division. Johnston promptly delivered it over. He was not taken by surprise. A faithless employee in the service of the government at Washington had surreptitiously notified him

through the pony express, and he had at once sent on his resignation. Upon being relieved by Sumner, who took possession without the slightest demur or opposition, Johnston, accompanied by a company of sympathizing friends, proceeded by the southern overland route to the southern states; was placed in an important confederate command, and was killed while leading the secession army at the battle of Shiloh.¹

On the evening of the day of General Sumner's arrival to supersede General Johnston, April 24, 1861, news came by pony express and telegraph of the firing upon Fort Sumter, which had commenced at noon, Friday, April 12. The information produced a profound effect, though for a while it could hardly be believed that the south was in earnest or that there would be much of a civil war. But in a short time, and as soon as the seriousness of the situation began to be realized, the Union sentiment of the great majority of the people, embracing much that was latent or had been lying dormant, came out strong and demanded expression. A great mass-meeting, called for this purpose, took place at San Francisco on May 11, 1861, and was the largest and most complete and emphatic public demonstration that had ever been held on the Pacific coast. The day was made a holiday; the houses and streets and ships in the harbor were covered with flags and bunting; business was suspended; and the community turned out to hear Union speeches and join in declarations and resolutions that the government must be sustained in its struggle against secession and treason. And the voice of San Francisco, which represented that of the entire Pacific coast, spoke in no uncertain tone. It was in fact, on account of this meeting and the immense preponderance of feeling in favor of the Union it manifested, that the legislature a few days afterwards adopted the decided and determined Union resolutions of May 17, which constituted one of the greatest, most encouraging and most effective supports the Union government had.

Not everybody, however, was for the Union. Immigrants from the southern states that had seceded and particularly those persons who had left families and relatives there, were, as was to

¹ San Francisco Evening Bulletin and other newspapers of April 25 and 26, 1861.

have been expected, opposed to the north. Though they could not help showing their bitter feelings, most of them were prudent enough not to be too noisy or violent and were not disturbed. But there were some exceptions. One of the most notable of these was Edmund Randolph of the old Virginia family of that name. He was a lawyer of great logical acumen and in some respects a man of great ability, but exceedingly eccentric or rather perhaps erratic. He was the same Edmund Randolph who had been connected with Walker's filibuster scheme in Nicaragua and afterwards was employed by the United States in the New Almaden quicksilver mine case and stood up with honor and credit against Judah P. Benjamin and Reverdy Johnson. In the recent political struggle, he had been on the side of the Union and so decidedly so that he pledged himself to loyalty and was a candidate on that side for the United States senate. It was even said that he had given President Lincoln notice of an attempt to take California out of the Union and that the prompt action of the administration in superseding General Johnston by General Sumner was in part due to Randolph's jealous watch over the integrity of the republic. But whatever may have been the truth in this respect and however he may at one time have been disposed to assist and support Lincoln, he, very soon after the firing upon Sumter, changed his sentiments. Virginia seceded on April 17, 1861. On July 24 Randolph, who was then suffering from an illness which proved to be fatal a few months afterwards, unexpectedly appeared before the Breckenridge or chivalry convention at Sacramento and spoke as follows: "My thoughts and my heart are not here to-night in this house. Far to the east, in the homes from which we came, tyranny and usurpation, with arms in its hands, is this night, perhaps, slaughtering our fathers, our brothers and our sisters, and outraging our homes in every conceivable way shocking to the heart of humanity and freedom. To me it seems a waste of time to talk. For God's sake, tell me of battles fought and won. Tell me of usurpers overthrown; that Missouri is again a free state, no longer crushed under the armed heel of a reckless and odious despot. Tell me that the state of Maryland lives again; and oh! let us read, let us hear, at the first moment, that not one hostile foot

now treads the soil of Virginia! If this be rebellion, then I am a rebel. Do you want a traitor? then am I a traitor. For God's sake, speed the ball; may the lead go quick to his heart, and may our country be free from the despot usurper that now claims the name of president of the United States."¹

No one found much fault with Randolph, because some such extravagance under excitement was expected of him. Besides, he spoke only for himself. But when Rev. Dr. William A. Scott, pastor of Calvary Presbyterian Church in San Francisco, which embraced quite as many Union people as secessionists, began interlarding his sermons with disunion politics and deliberately praying for "all presidents and vice-presidents" and in other ways exhibiting offensive partisanship, there was great indignation. Scott, who had come from New Orleans, had once before imprudently got himself into trouble by offensive zeal against the vigilance committee. His avowed opposition to that organization was that it was a revolt against law; but he was now on the side of revolt and rebellion; and, not satisfied with his own individual opinion, he assumed to teach it to others and, with the object of giving it greater sanction, to launch it from the pulpit. His friends succeeded in smoothing over the former difficulty. But they could not do so with the latter. On Sunday morning, September 22, an effigy with the inscription, "Dr. Scott, the reverend traitor," was found hanging in front of his church. A great crowd gathered, many of whom pressed into the edifice for the purpose of hearing him pray for the secession president; but he had been cautioned and on that occasion omitted the offensive part of his prayer. Nevertheless it was apparent that the community felt outraged; and his friends plainly saw that it would not do to take any further risks. Even as it was, violence was averted only by very careful management on the part of the city authorities. In a day or two afterwards Scott found it necessary to resign his pastorate; and on October 1 he and his family left California and went abroad. In after years, there being apparently no place for him in the south, he returned to San Francisco; but he never again recovered the position and influence he had once enjoyed.

¹Sacramento Union, July 25, 1861; Davis' Political Conventions, 165-173.

Almost all the other clergymen of San Francisco, and for that matter of California, took strong part on the Union side. Almost all of them caused the stars and stripes to be displayed and kept flying from the tops of their churches; and an especially large flag waved from Calvary after Dr. Scott's withdrawal. But by far the most prominent and effective of the Union clergy was Thomas Starr King, pastor of the First Unitarian Church in San Francisco. He had come out from Boston in 1860 to take charge of his congregation, but almost immediately commenced delivering, in addition to his other work, lectures and occasional addresses on literary and other secular subjects, which attracted great attention. He was always ready and fluent, pointed, graphic in description and charming in delivery. His voice was of exquisite tone; but he could so use it as to arouse and fire the popular mind. After the breaking out of the war, he on all occasions that offered spoke for the Union and did much, particularly in the dark days of the conflict, to animate and encourage the Union sentiment of California. He, more than any other person, was the promoter of the "sanitary fund," for which California became famous. Unfortunately, his exertions were too great for his physical strength; and he died of an affection of the throat, said to be diphtheria, in March, 1864, at less than forty years of age. He was universally regretted. Among his other labors he had succeeded in having his congregation, which largely increased during his ministry, build a spacious new church on Geary near Stockton street; and, upon his death, his body by special permission of the city authorities was buried in the church-yard under a marble monument next the street. Subsequently, when the church moved westward to the corner of Geary and Franklin streets, the body and monument were removed with it.

The secession of the southern states and breaking out of the civil war produced many changes in California, which were of importance and benefit to it. One of the first was the obstruction of the southern overland mail route and the establishment of a daily overland mail by way of Salt Lake on the route followed by the pony express. This led to the extension of the telegraph line, which was completed across the continent and put San

San Francisco in immediate communication with New York in October, 1861. Another result, which was intended in part to provide a quicker and more secure communication between the Atlantic and Pacific coasts and in part to reward the loyalty of California by granting a prayer which it had been preferring for a number of years, was the passage of an act by congress, approved July 1, 1862, for the construction of a railroad across the continent from the Missouri river to the Pacific ocean. Still another result was a great accession to the population of California by persons, who fled from the scenes of tumult and war in the east, and the stimulation of business of all kinds on the Pacific coast. San Francisco in particular felt the effect. It rose, all at once as it were, from the depression caused by the Fraser river drain into wonderful activity. More than a thousand new houses were built or contracted for and among them the large and for those days magnificent Russ and Lick Houses and Occidental Hotel. The water supply of the city was increased by the bringing in of Pilarcitos creek from San Mateo; and the old omnibus lines on the main city thoroughfares began to be superseded by the street railroads.¹

Another remarkable result of the breaking out of the civil war, which was claimed to have been occasioned by the victory of the Republican party in the United States in 1860, was the making of California a Republican state. It had always been strongly Democratic. But almost immediately after the receipt of news of the firing upon Sumter, a call was made for a Republican state convention, which met at Sacramento on June 18, 1861, and nominated Leland Stanford for governor and John F. Chellis for lieutenant-governor. On the other hand the anti-Lecompton Democrats nominated John Conness for governor, and the Lecompton Democrats, John R. McConnell. On August 2, in the midst of the campaign, came news of the battle of Bull Run, which, though lost to the Union arms, intensified the feeling against secession, strengthened the Union cause and made many Republican votes. The election took place on September 4 and resulted, to the surprise of many, in a complete triumph of the Republicans—the first state victory in California they gained.

¹ Hittell's San Francisco, 333, 334.

The vote stood a little over fifty-six thousand for Stanford; nearly thirty-one thousand for Conness, and thirty-three thousand for McConnell. The great change in public sentiment became apparent by a comparison of the tally with that of the gubernatorial election of only two years previous, when Stanford, the Republican, received only ten thousand votes; Currey, the anti-Lecompton Democrat, thirty-one thousand, and Latham, the Lecompton Democrat, over sixty-two thousand.¹

Soon after the election, which manifested and made patent to all eyes the preponderating Union sentiment of the state, a number of military men, who had made California their home, departed for or came forward in the east and tendered their services to the government. In October Henry W. Halleck left for this purpose. Among the Californians or persons who had for some time resided in California and became prominent in the war, were William T. Sherman, Joseph Hooker and Ulysses S. Grant. Each of these was for a time at the head of the United States army. Many other Californians, equally patriotic though in less advanced positions, gave their services to and merited well of the country. Edwin V. Sumner, who had relieved Johnston and who upon the call of the president in May for seventy-five thousand troops had started the volunteering, organizing and drilling of the Californian regiments, departed towards the end of October for more active operations in the east, leaving however an able and reliable Union soldier, in the person of Brigadier-general George Wright, to administer all necessary military affairs on the Pacific in his place. Edward D. Baker, who had served in the Mexican war and was a soldier as well as an orator and who, though a United States senator from Oregon, was in heart a citizen of California which had been his home and residence for many years, was one of the very first to sacrifice his life in the Union cause. Upon the breaking out of hostilities, he volunteered for active service in the field. Without resigning his seat in the United States senate, he raised a body of men in the east composed mainly of Californians and known there as the "California regiment." It was while leading this body of men against the enemy at Ball's Bluff that he fell, pierced with many

¹ Davis' Political Conventions, 108, 173, 180.

bullets. The news of his death, one of the first dispatches that came over the transcontinental telegraph line after its completion, was received in San Francisco on October 24 and caused great sorrow. His body, which was brought back by steamer, received a public burial on November 11, 1861, and was deposited near that of Broderick in Lone Mountain cemetery.

The California legislature of 1862 met at Sacramento on Monday, January 6. On the next day James McM. Shafter of San Francisco was elected president pro tempore of the senate and George Barstow of San Francisco speaker of the assembly. Both were pronounced Republicans. Shafter did not deem it necessary to say anything in his inaugural remarks about secession or national affairs; but Barstow, who was very radical and outspoken and had won his election by the majority of a single vote, launched forth from the start in favor of a vigorous and uncompromising prosecution of the war.¹ On Friday, January 10, Leland Stanford, the new governor, and John F. Chellis, lieutenant-governor, were inducted into office. As was to be expected under the circumstances, much interest was felt in what Stanford, as the head of the new political régime, would have to say in his inaugural address. After a few introductory remarks, he spoke in favor of the policy of encouraging settlements upon public lands and, with that end in view, of offering liberal inducements to settlers. He was therefore of opinion that there was something wrong in the law or decisions of the Californian courts that the owner of an unsegregated part of a Mexican grant or of a Mexican grant within larger exterior boundaries could exclude and eject squatters from any portion of such exterior boundaries or, as he expressed it, "that a person, who owns or claims but one league of land should be able to hold, control and dispossess others from a hundred leagues." He consequently thought and recommended that a remedy should be supplied by legislation. He next took occasion to speak against the Chinese and said that their immigration and settlement in California should be discouraged by every legitimate means. "Asia," he continued, "with her numberless millions, sends to our shores the dregs of her population." There could be no doubt, he added, that the

¹ Assembly Journal, 1862, 9, 10.

presence of numbers of that degraded and distinct people would exercise a deleterious influence upon the superior race; and he therefore announced that it would afford him great pleasure to concur "in any constitutional action having for its object the repression of the immigration of the Asiatic races."¹

At the same time he was in favor of steam communication with eastern Asia; and, with an eye to securing "the course of the great and vastly important trade of the eastern world," he earnestly advocated a speedy and effective overland communication between California and the Atlantic states.² That subject had always engaged the attention of the people and it had not been lessened by the lapse of time. It was not necessary at this late day to go into a general argument to prove the importance of a transcontinental railroad. But its military necessity was now more than ever apparent; and "I think," he went on, "the time has arrived when in consequence of local business, the most difficult and important part of the work can be accomplished without direct pecuniary aid from the national government. May we not, therefore, with the utmost propriety, even at this time, ask the national government to donate lands and loan its credit in aid of this portion of that communication, which is of the very first importance not alone to the states and territories west of the Rocky mountains but to the whole nation and is the great work of the age?" He was also in favor of asking the national government for the timber lands of the state for the support of eleemosynary institutions and works of internal improvement. He was against any interference by the general government with the working of the mines and in favor of retrenchment in the public expenditures; but at the same time he was opposed to any niggardly, mean or narrow spirit in withholding appropriations that would promote the general welfare and expressly favorable to munificent appropriations for charity and education.³

Stanford became, what Downey by his persistent opposition to the manifest spirit of the age missed being, the "war governor" of California. It cannot be claimed that he ever took any very important step forward that would have rendered the designation

¹ Senate Journal, 1862, 99.

² Senate Journal, 1862, 99, 100.

of "war governor" illustrious, as did some of his cotemporary governors in the east. But he was elected as a Republican and a Union man and he fully lived up to the undertakings and pledges of his party. In his inaugural he chalked out his position on the all-absorbing subject by saying, "The citizens of California are by birth the representatives of all parts of the Union and are naturally imbued with more or less of local sympathies. Let us be as tolerant and charitable of opinion as possible. But none should ever forget that California is one of the United States; that she is loyal to the Union; that her citizens have quite recently unmistakably declared their devotion to our national unity, their recognition of the supremacy of the national government and their determination to maintain both inviolate. Every citizen of California must remember his duty and, remembering, discharge it faithfully. His fellow-citizens are now in the field, armed against traitors and treason and for the preservation of the Union and the national government. The whole power of the state should, if necessary, be wielded to encourage, support and sustain those patriotic citizens and their compatriots. Let treason meet a just and speedy punishment; and may we soon, as I doubt not we shall, see peace restored to our beloved Union, our institutions more firmly implanted than ever and sustained by a national sentiment that shall pervade every section of our country." Immediately after Stanford's inaugural, John F. Chellis, the lieutenant-governor, upon being installed president of the senate, said to that body, "California is bound by every tie of gratitude, every incentive of interest and consideration of honor, to do all in her power to sustain the Union in its struggle to maintain its integrity and uphold the laws and constitution of our country."¹

The winter of 1861-2 was remarkable for the most extraordinary floods ever known in the state. The rain commenced in November and it continued raining more than half the time until February. In November over four inches fell; in December nearly ten, and in January twenty-four and a half, much the largest monthly fall recorded in California. The result was the flooding of the greater portions of the Sacramento and San

¹ Senate Journal, 1862, 102, 103.

Joaquin valleys and the driving of most of the country population to San Francisco. Within a week after the legislature convened, the city of Sacramento was almost completely submerged and communication with the capitol and from street to street and from house to house could only be maintained with boats. Nearly the entire country as far as the eye could reach north and south and all the way to the Coast Range of mountains on the west was a sea of water. Here and there the roofs of houses or elevations of land stuck out; but otherwise it was hard to point out any special locality. The course of the Sacramento river could only be told by the tops of the trees that grew along its banks. On January 11, a joint resolution was moved and adopted in the senate to adjourn the legislature to San Francisco; and in the meanwhile it was resolved that the sergeant-at-arms should procure one or more boats for transportation of members and attachés of the senate and, with an evident eye to what might otherwise be expected of ordinary boatmen, arrange the price to be paid per hour before services were rendered. The assembly at first refused to concur in the resolution for adjournment, but like the senate authorized its sergeant-at-arms to hire the necessary boats to carry members to and from the capitol. But a few days afterwards, as the rains still continued and the waters rose higher and higher, Frank M. Pixley, the new attorney-general, having in the meanwhile given his opinion that the legislature might legally adjourn to any other place, the resolution was adopted by the assembly also, and the time for meeting in San Francisco fixed for Friday, January 24.¹

In accordance with the resolution so adopted, the legislature met in the Merchants' Exchange building on the northeast corner of Washington and Battery streets, San Francisco, on January 24. It required a few days to get things in running order; but, as soon as the new quarters were properly arranged, the work of the session went forward with great activity. Barstow, in his inaugural as speaker of the assembly, had called attention to the fact that the sitting of the legislature cost the people of California over a thousand dollars per day and that there was

¹ Senate Journal, 1862, 105, 108, 124; Assembly Journal, 1862, 104, 107, 115, 120, 125, 126.

no good reason why it should not get through its labor in less than sixty days. But for various reasons the session lasted till the middle of May. One of the first important steps taken was a concurrent resolution adopted on January 29, instructing the governor to give notice by telegraph to the United States secretary of the treasury that the state of California would assume and pay the direct tax of a little over a quarter of a million of dollars apportioned by congress for meeting the interest on the public debt.¹ Though the majority of the houses was not Republican, it was very strongly Union, and Union measures prevailed. Even before the removal to San Francisco, a motion to adjourn on January 8, in honor of the great Union president, Andrew Jackson, and his victory at New Orleans, was adopted in the senate. Almost immediately after the convening of the houses in the San Francisco Merchants' Exchange—and curiously enough on motion of the same William Holden who had moved the resolutions of censure against Broderick in 1859—a resolution was adopted to erect a staff and fly the American flag over the building. On February 22, the senate met in its chamber for the purpose of hearing Shafter, its president pro tempore, read Washington's farewell address. There were numerous propositions as to Union resolutions, varying less in spirit than in words; and the result was the adoption on April 4 of a renewed expression of the Union feeling, in favor of a thorough and vigorous prosecution of the war and unabated, unalterable and uncompromising hostility to treason and rebellion. Richard F. Perkins, Republican senator from San Francisco, went so far as to advocate as a war measure the confiscation and liberation of all the slaves of secessionists and the employment of them in the Union armies; but he was very far ahead of the times and was the only one that voted for his resolutions.²

While the legislature agreed with Stanford on the Union and some other questions, the senate was not entirely in accord with him in reference to appointments. One of his first moves in this direction was an attempt to prevent the confirmation of Governor Downey's appointment of Thomas N. Cazneau as superintend-

¹ Senate Journal, 1862, 125; Assembly Journal, 1862, 9, 10; Stats. 1862, 598.

² Senate Journal, 1862, 28, 130, 246, 307, 308; Stats. 1862, 603, 606.

ent of immigration. He sent in a message withdrawing the appointment; and the president of the senate decided that it was effective for that purpose; but the senate overruled the decision and confirmed Cazneau by the decisive majority of twenty-three to thirteen. One of his first direct nominations was that of R. P. Johnson as port-warden of San Francisco in place of Charles R. Street removed; but the senate, though it approved several other appointments to similar offices, refused to confirm Johnson. He then nominated Robert C. Waterman in place of Street; but again the senate refused to confirm. He next nominated Henry Bush, who was also rejected, and finally D. J. Staples, who was confirmed.¹ Stanford's first veto was of a senate bill to transfer one hundred thousand dollars from the swamp land fund into the general fund for the purpose of paying members and attachés of the legislature. He said that it was doubtful whether the money, to which the swamp land fund had an exclusive right, could be repaid from the general fund on account of its being heavily in debt; and for that and other reasons he could not approve the bill. But as usual on such occasions, a governor's scruples are of little avail against the necessity of providing pay for legislators; and the act was promptly passed over the veto.² In other instances his vetoes were sustained—among which was one disapproving a tax on consigned goods, and another disapproving an amendment to the statute of limitations, which would practically have deprived many owners of land of their rights.³

Several very important bills, which produced marked effect in the state, were passed at the legislative session of 1862. One of these was an act to provide for the formation of corporations for the accumulation and investment of funds and savings. It was the original legislation, under which all the savings and loan societies, that have proved among the most beneficent banking institutions of the country, organized.⁴ Another was an act to provide for issuing arms and accouterments to colleges and academies for the use of the youth and to prescribe the tactics to be used by them. It was under this act that the start was made

¹ Senate Journal, 1862, 119, 194-360.

² Senate Journal, 1862, 358; Stats. 1862, 56.

³ Senate Journal, 1862, 642, 722-725.

⁴ Stats. 1862, 199.

in that very general military training of the rising generation, which has always since been of great interest and importance as a matter of state education.¹ Another important bill, which produced a beneficial effect though it never became a law, was in reference to fortifying the harbor of San Francisco. On March 25, Governor Stanford had telegraphed to William H. Seward, United States secretary of state at Washington, asking on behalf of the legislature whether the foreign relations of the country were such as to make it necessary or expedient for California to take active measures to that end. Seward had answered that the aspect of foreign relations was pacific, but in the opinion of the president, while the civil war should actively continue, there might be foreign aggression; that no part of the United States ought to be left exposed, and that one or two iron-clad steamers at San Francisco would insure its safety at small expense. Subsequently on April 28, the assembly committee on military affairs, to whom the subject had been referred, made an interesting report on the importance of fortifying San Francisco and presented a bill for the appropriation of five hundred thousand dollars for the construction of one or two iron-clad gun-boats. The proposition was to raise the money by the issuance of state bonds, with a reservation that if congress should provide the necessary defenses the bonds should not be placed on the market. The bill passed the assembly but was not reached in time for passage in the senate.² The discussion, however, called attention to the subject; and the United States government undertook to provide defense by sending out several cruisers and dispatching an iron monitor in sections, which was afterwards put together and named the *Comanche*. But fortunately there never was any attack or any need of greater defense than San Francisco could have made with its own resources.

At the same legislative session of 1862 several important amendments to the state constitution, which had been proposed and adopted in 1861, were re-adopted so as to be ready for submission to a vote of the people at the general election of September 3, 1862. These were to make the sessions of the legislature

¹ Stats. 1862, 483.

² Assembly Journal, 1862, 535, 536, 674-676, 698.

biennial instead of annual; to elect assemblymen for two years instead of one, and senators for four years instead of two; to elect the governor and state officers for four years instead of two, and among them to elect, instead of appoint, a secretary of state; to increase the justices of the supreme court to five instead of three, and make them elective for terms of ten years at special judicial elections; to divide the state into fourteen judicial districts and as many more as two-thirds of the legislature might deem necessary, and elect judges thereof for terms of six years at the judicial elections; to organize a county court in each county and elect judges thereof for terms of four years at the judicial elections, who should act also as probate judges, except that the legislature might provide for a separate probate court and probate judge in San Francisco. There were some changes made in the jurisdiction of the various courts; and the old criminal courts of sessions with associate judges were abolished. In other words the composition of the judiciary of the state was entirely changed. And finally it was provided by another amendment that a state superintendent of public instruction should be elected at the judicial election and hold office for a term of four years. It may be added in this connection that these amendments were submitted to vote at the election of September, 1862, and adopted so as to become integral parts of the constitution. An amendment against special and local legislation in many enumerated cases and in all cases where general laws could be made applicable was adopted by the legislature of 1862; but it was rejected by the assembly of 1863; and the evil of special and local legislation, which by that time had begun to assume huge proportions, continued to grow larger and larger until finally destroyed by what may be called the very severe cure of the new constitution of 1879.¹

Two matters of unusual character, which probably had to be gone through with though the subject of neither was worth the trouble, attracted much attention before the legislature of 1862 adjourned. The first was the conduct of Rev. Samuel B. Bell, a minister of the gospel, who had been elected to the assembly from Alameda county and appointed chairman of the judiciary

¹Stats. 1862, 581-588; Assembly Journal, 1863, 654.

committee. It appears that he had without authority from the assembly directed John T. Diossy to act as clerk of that committee and gave him a certificate of services performed, by means of which Diossy had drawn two hundred and thirty-five dollars. The judiciary committee, which had in the meanwhile been bickering over the subject of a clerk, appointed a sub-committee to investigate Bell's conduct; and this sub-committee reported that it was "a gross wrong and one at least that calls upon all honorable men to condemn." But another larger committee subsequently found that, although Bell had gone too far, he had meant no fraud; and the matter with that was allowed to drop.¹

The second matter of unusual character above referred to was the impeachment and trial of James H. Hardy, judge of the district court of the sixteenth judicial district of the state. Hardy, who though without much learning had considerable ability as a lawyer and politician, was a violent partisan of the extreme southern type. Though not polished or refined, he had always been prominent in the chivalry councils and in the great chivalry year of 1859 was first appointed and then elected district judge. One of his main achievements in the judicial office was to so manage as to preside in the trial of Terry for the killing of Broderick and to so rule on that trial as to render Terry's acquittal, as many people thought, a foregone conclusion. The memory of this conduct among other consequences of his work on the bench, in addition to an impudent habit he had of publicly using noisy secession language, induced the assembly of 1862 to present to the senate articles of impeachment against him. The articles, fifteen in number, which were presented on April 10, charged Hardy with high misdemeanors, corrupt misconduct in office and willful neglect of the duties thereof. They went on to specify a large number of cases in which he was alleged to have acted corruptly, including the Terry case, and concluded with a charge, numbered article fifteen, of using seditious and treasonable language, particularly on June 25, 1861, at Jackson, Amador county, on which occasion he had offered a toast to "Jeff. Davis and the southern confederacy," and on June 26, 1861, at Angels, Calaveras county, when he had said of the American flag, "That

¹ Assembly Journal, 1862, 311, 312, 329, 330.

is an old woman's rag and ought to be torn down." Subsequently on April 26 seven supplemental charges were presented; and a demand was made for his removal from office.¹

On April 28, 1862, the senate resolved itself into a high court of impeachment, as provided by the constitution, for Hardy's trial. A committee of the assembly appointed for the purpose came forward as prosecutors and Hardy with counsel appeared in defense. Many witnesses were sworn and examined; and the trial lasted, consuming portions of nearly every day, until May 14, when a vote was taken upon each article of impeachment separately. The result was a vote of "not guilty" upon every article except the fifteenth, which charged him with seditious and treasonable language. Upon that he was adjudged guilty—the vote being twenty-four for conviction against twelve for acquittal, or the required two-thirds. Immediately after the voting was concluded, a resolution was presented and adopted to the effect that Hardy, having been convicted of the high crime and misdemeanor charged in article fifteen, it was adjudged that he should be and was thereby declared suspended and removed from his office of district judge of the sixteenth judicial district. An attempt was made by his friends to suspend him for only six months, but it failed; and absolute removal was determined on by a vote of twenty-one to fourteen. The high court of impeachment was then declared dissolved; and Hardy as a factor in public affairs virtually dropped out of sight.²

Two other matters, unimportant in themselves but significant as throwing light upon the condition of affairs in the legislature of 1862, may be mentioned. One was the matter of the arrest of Allen P. Dudley, a lawyer of Stockton, for contempt on April 5. The committee of the assembly, which prepared the charges against Judge Hardy, had called Dudley as a witness; and he had answered nearly every inquiry; but, when asked whether Hardy had not employed him as an attorney and been guilty of corruption in certain cases pending in Hardy's own court, Dudley pleaded professional privilege and declined to answer. It was thereupon ordered that he should be arrested. Upon volun-

¹ Senate Journal, 1862, 543-549, 625-629.

² Senate Journal, 1862, 634-719; Assembly Journal, 1862, 559-573.

tarily appearing at the bar of the assembly, he stated the facts, disclaimed any intentional contempt and said that he would answer if the house overruled his plea of privilege. On motion of Speaker Barstow, he was exonerated and discharged, but required to answer. Several of the supplemental articles of impeachment against Hardy were based, in part at least, on Dudley's testimony and the vote of the high court of impeachment upon them was very close, but not sufficient to convict.¹

The other matter was an assault and battery by Assemblyman R. D. Ferguson of Sacramento upon Speaker Barstow on April 9. It appears that Barstow had made several rulings as speaker, of which Ferguson complained. When the two met in the lobby after the session, Ferguson charged Barstow with insulting him and demanded, if no insult was intended, that Barstow should so state from the chair. Barstow disclaimed intending any insult and agreed to so state if a proper occasion arose. But Ferguson, instead of being satisfied, proceeded in a violent and boisterous tone to charge Barstow with having previously treated him in a "petty, mean, tyrannical and cowardly" manner. Barstow replied that under the circumstances he no longer considered himself bound to say anything from the chair to please Mr. Ferguson and would not do so. Upon this Ferguson, who was physically large while Barstow was physically small, struck the latter in the face and would probably have gone further if others had not interfered. He, however, continued his violent talk and spoke about dragging Barstow from the speaker's chair. On the other hand Barstow simply remarked that Ferguson had not evinced his usual good judgment. And with this the affair would probably have ended, but that the assembly took it up on its own account and after an investigation adopted a resolution requiring Ferguson to forthwith render an ample apology to the house for his assault upon its presiding officer. He, however, was unwilling to acknowledge his offense; and on the last day of the session a resolution was adopted by a vote of thirty-five to sixteen to the effect that he merited the censure of the house "for his ungentlemanly and insulting conduct towards the speaker."²

¹ Assembly Journal, 1862, 512, 513.

² Assembly Journal, 1862, 634, 635, 758; San Francisco Evening Bulletin, April 9, 1862.

On May 15, the houses adjourned; and both Shafter in the senate and Barstow in the assembly made valedictory remarks. Both were intensely patriotic, unreservedly for the Union, determined to put down the rebellion at any cost and confident of the future. Shafter in addition referred to the legislation of the session as highly essential to the general welfare of the state. He said that "though demagogues, aided by a press ever too ready to criticise and condemn," had sought to hamper and throw discredit upon it "by the hackneyed cry of special legislation," yet it was evidently demanded by the exigencies of the times and would "tend to the more rapid development and improvement of our youthful but giant state."¹ Barstow spoke of the black clouds of war that had hung gloomily over the country when the legislature met on January 6, and how day by day that cloud had been lifted more and more and the news of victory after victory to the national banner brought to our ears. He spoke of propositions for peace; but he insisted that the nation could not treat with traitors in arms. When the government should be crowned with victory, it should remember that moderation in triumph and mercy in the dispensation of justice were ever to be included among the attributes of true greatness. There should be no other revenge for the past than that which would afford the best guarantee for the future. The nation wanted peace; it loved peace; but it did not want peace at the sacrifice of the Union. It demanded that when the contest was once settled, it should be settled forever.²

¹Senate Journal, 1862, 731, 732.

²Assembly Journal, 1862, 759-762.

CHAPTER XII.

STANFORD (CONTINUED).

IN the meanwhile the civil war in the slave states had been going on with great energy on both sides. The result of the first important battle between the north and the south, which took place at Bull Run on July 21, 1861, had given the south immense encouragement. Its people seemed to consider themselves justified in thinking that the north could not or would not fight, and particularly that it could never coerce the south. By that time all the states that composed the Confederacy—that is to say, South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, North Carolina, Arkansas, Tennessee and Virginia—had seceded, one after the other; and there was danger of other states following. The southern leaders at once called for new levies of troops, amounting to about a hundred thousand men, to whom they virtually promised victory and triumph. Their language, based upon the defeat and rout of the northern forces at Bull Run, was arrogant and boastful. They declared that one southerner was equal to three northerners; and they laughed to scorn the idea of a northern army invading and for any length of time being allowed to hold footing on what they called “the sacred soil of the south.” So secure did they feel that they ordered every male citizen of the United States to depart within forty days from the Confederacy and proceeded, with the most searching inquisition and under immense penalties in case of concealment, to confiscate the property of all persons who acknowledged allegiance to the Union. On the other hand the north began to realize—what it could hardly credit at first—that the south was in earnest and determined, and that, instead of a game of parade and bluff, it had a desperate conflict on its hands. But at last, finding that all its efforts to avoid the arbitrament of

war had been in vain, it accepted the situation and prepared for the conflict by calling out a half million troops to crush the hydra-headed monster that threatened its existence and had been pampered and fattened into a dangerous power by concessions and peace-proposals.

The Confederacy started with very great advantages in some respects. John B. Floyd, the United States secretary of war under President Buchanan, as has been stated, had made it his peculiar care to send all the national arms and munitions of war he could manage to get hold of to places in the south; and upon the breaking out of hostilities they of course fell into the hands of the secessionists. At the same time army and navy officers were so distributed that, when the grand conspiracy was ready to strike, nearly all the forts, vessels and other public property of the United States, south of the Potomac and Ohio rivers, were found in rebel hands and were at once turned over to Confederate possession. But notwithstanding these advantages, they had a very long line of defense to maintain, amounting, it was estimated, to about eleven thousand miles. This line included the Atlantic and Gulf coasts from the mouth of the Potomac to the mouth of the Rio Grande. On the land side it ran up the Potomac from the ocean, across the mountains in the western part of Virginia, along the southern part of Kentucky, across the Mississippi not far below the mouth of the Ohio, through the southern part of Missouri to and across the Indian Territory southwest to Texas, along the Texas line west to the Rio Grande and down that river to the Gulf. On April 19, 1861, just a week after the firing upon Sumter and four days after Lincoln's call for seventy-five thousand volunteers for three months, the first blood of the war was shed. The response of the north to Lincoln's call had been so prompt that the first Massachusetts troops at once began their march; and on their march they were joined by the first Pennsylvania troops. As these were passing through Baltimore on their way to Washington, they were attacked by a mob of Maryland sympathisers with secession and some of the soldiers were killed. The mob, however, was soon quelled and thenceforth kept in subjection by the strong arm of the military.

On the same April 19, 1861, notwithstanding the sea-coast

line of the Confederacy was over three thousand miles in length, Lincoln issued a proclamation declaring a blockade of all the southern ports; and the federal government at once proceeded to purchase and arm vessels to enforce it. But at first the Confederates, on account of the prearranged disposition of the navy, had the advantage at sea as well as on land; and for a while they assumed to make sport of Lincoln's proclamation as a "paper blockade." On April 20, the very next day after its issue, they seized the Norfolk navy-yard in Virginia and the three or four United States war vessels that were lying there. One of these was the famous steam frigate *Merrimac*, which they afterwards transferred into a sort of iron-clad by covering its sides with iron so as to make it look something like the roof of a house; and for a while, and until an antagonist could be provided, it did fearful execution against national vessels. On May 17, less than a month after the proclamation of blockade, Jefferson Davis, the president of the Confederacy, authorized the issue of letters of marque and reprisal against the peaceful commerce of the United States, and thereby enabled and caused great damage to be done to northern merchant ships, before they knew there was a war or had a possible opportunity to arm or put themselves in a state of defense.

One of the main hopes of the Confederacy was that it would obtain recognition and assistance from Great Britain and France. The former was supposed to depend entirely upon the south for its cotton; and it was expected to take measures to prevent any effective blockade of the cotton-shipping ports. On the other hand France was under the control of Louis Napoleon, who had designs of establishing an empire in Mexico and was disposed to do anything that would promote dissensions among the people of the United States. Very soon after the establishment of the Confederate government, it appointed John M. Mason and John Slidell commissioners to procure recognition for it, solicit loans and negotiate treaties at London and Paris. They managed in November, 1861, by running the blockade, to reach Havana in Cuba and thence took passage, on the British mail steamer *Trent*, for England. Some distance out on the high seas the *Trent* was overhauled by a United States war vessel under Captain Wilkes,

and Mason and Slidell were taken off and carried to Boston where they were imprisoned in Fort Warren. This action of Wilkes caused great excitement in Great Britain. Lord Palmerston, the British premier, made a peremptory demand for the surrender of the prisoners; and the United States government, which had already disavowed the act of Captain Wilkes, promptly released them and sent them to England. They thus finally reached their destination; but, as it turned out, they did not accomplish anything important. Though the governments, or at least certain elements of the governments, of Great Britain and France were inimical to the long and continued prosperity of the United States, the general public opinion of those countries was favorable to it and prevented any very hostile action at headquarters.

Meanwhile, when Virginia passed its ordinance of secession on April 19, 1861, that portion of the state lying west of the Alleghany mountains had refused to go with the rebels, but adhered faithfully to the Union. Upon this a Confederate army was at once sent to coerce it, which after some fighting was repulsed by the United States forces under General George B. McClellan. A new Confederate force under John B. Floyd, who was soon afterwards superseded by General Robert E. Lee, proceeded against it, but was baffled by the United States forces under General William S. Rosecrans. About the same time, two hostile armies confronted each other near Winchester in middle Virginia—one under the Confederate general Joseph E. Johnston and the other under the Union general Robert Patterson. While these were watching each other, General Winfield Scott, who in subordination to the president was at the head of the national army, sent a large force under General Irvin McDowell from Washington down into eastern Virginia against the Confederates posted at and about Manassas Junction under General Pierre G. T. Beauregard. McDowell's army advanced with what is usually called gallantry and engaged the enemy with bravery, and at first with some success; but, while the battle raged, Johnston managed to elude Patterson at Winchester and rushed his troops by rail to the support of Beauregard; and the result was the defeat and rout of the Union forces at Bull Run. It appears

that there were plenty of Union soldiers within call that could have made the battle a complete triumph for the national government; but there was nothing that could be called management anywhere; and, instead of a Union victory, this first important advance of the national army resulted in a disastrous and humiliating repulse. About twenty-four thousand men were engaged on each side, though the Confederate president claimed that there were nearly three times as many Union men as Confederates; and it was upon this claim that his followers based their assumption of the superiority of the rebel to the loyal soldiers.

The failure of McDowell and the retirement of Scott, who was too old for further active service, opened the way for the promotion of McClellan to the position of commander-in-chief, under the president, of the United States armies. McClellan had won some distinction in western Virginia; and as a part of the result of his fighting there, West Virginia was preserved for the Union and, afterwards, in 1863, was admitted and became a separate state. This acquisition was of very great importance and tended to magnify McClellan's merits. He was supposed by his friends to be a great soldier; and, as a matter of fact, he appears to have had a considerable amount of military knowledge, was a good tactician and could talk learnedly on battles and theories of war. But he had no genius for conflict and lacked much of being an able general. His plan of action, instead of remaining in front of Washington and advancing from there as he got ready, was to go around by sea to Fortress Monroe at the mouth of the James river and thence proceed up what was known as the peninsula towards Richmond, which had become the capital of the Confederacy. Whatever his idea in making this move may have been or however it may have comported with what he was fond of terming "strategy," it proved unfortunate. He was, so to speak, hemmed in on the peninsula; and, though he slowly advanced, it took so much time and his fighting was at such great sacrifice and did so little good, that the Union cause would probably have fared very badly, had it not been for others.

McClellan spent his time for nearly a year chiefly in drilling his troops and calling for fresh levies. In the meanwhile more or less fighting had been going on in Missouri for the purpose

on one side of drawing it into the Confederacy and on the other of preventing its secession. Its governor, Claiborne F. Jackson, against the will of the people in general, had taken part with the Confederacy and summoned the state troops to sustain him. He and the militia which responded to his call were met at Booneville in June, 1861, and defeated by United States troops under General Nathaniel Lyon. The Confederates rallied and a desperate battle took place at Wilson's creek near Springfield in the southwestern part of the state on August 10, when Lyon was killed and the Union thereby sustained a great loss. The loyal troops retreated; and General John C. Fremont, who was then in command for the United States of the department of the west, decreed martial law throughout the state. From that time for some months the Union cause in Missouri continued to lose ground. In November, however, after several conflicts of varying success, the United States forces under General John Pope turned the tide; and subsequently on March 6, 1862, was fought the decisive battle of Pea Ridge in northwestern Arkansas, which finally drove off the Confederates and secured Missouri for the Union. In the adjoining border state of Kentucky, and much in the same manner and under the same circumstances as in Missouri, several battles were fought—one by forces under James A. Garfield against those of Humphrey Marshall and one by forces under General George H. Thomas against those of General F. K. Zollicoffer, in which the United States was victorious; and the possession of the state was likewise secured for the Union. In the meanwhile in August, 1861, a formidable expedition was fitted out at Fortress Monroe under General Benjamin F. Butler and Commodore Silas H. Stringham to proceed against southern ports by sea. It succeeded in capturing Forts Hatteras and Clark at the entrance of Pamlico Sound in North Carolina; and in October General Thomas W. Sherman and Commodore S. F. Dupont, proceeding from the same place, took Hilton Head, Phillips Island and the adjacent "Sea Islands" on the South Carolina coast, which were thenceforth held for the Union and with a constant menace at Charleston and at Savannah in Georgia.

But the most important military operations of the time, and

perhaps, on account of the effect they produced, of the war, were those on the Tennessee and Cumberland rivers. There was stationed in command of the post of Cairo at the junction of the Ohio and Mississippi rivers a colonel of Illinois volunteers, who had been brevetted a brigadier-general. His name was Ulysses S. Grant. He was a native of Point Pleasant, Ohio, born April 27, 1822, and had been educated at West Point and took part as a lieutenant in the Mexican war. Subsequently he was stationed as an officer of the United States army in northern California and southern Oregon, where for a while he rusted for want of adequate active service. In 1854 he resigned from the army and tried farming, but was not successful. Agriculture was not his fort. When the civil war broke out in 1861, he was a clerk in his father's leather-store at Galena, Illinois. At the first mutterings of the coming storm, he at once offered his services and became mustering officer for the state; and soon afterwards he was appointed colonel of the Twenty-first Illinois regiment. As such colonel, in September, 1861, he took the field and by gallant conduct soon became a brigadier-general and was placed in command at Cairo. In the early part of 1862, President Lincoln, becoming dissatisfied with McClellan's inaction and being also urged forward by the push and energy of Edwin M. Stanton, who had just succeeded Simon Cameron in the office of United States secretary of war, ordered a general advance with a determination that something should be done. This order suited Grant. Even in advance of the required time, he grasped the offered opportunity and undertook with an army of about fifteen thousand men under his charge, assisted by seven gun-boats under command of Commander A. H. Foote, to open the way into the heart of Tennessee and thereby break and penetrate the rebel line of defense in that region. He accordingly proceeded about eighty miles up the Tennessee river and invested Fort Henry, which he reduced on February 6, 1861, driving the Confederates from that place to Fort Donelson on the Cumberland river about twelve miles eastward. This was supposed to be the most impregnable rebel stronghold in the west. Grant pursued to that point, while Foote with his gun-boats passed down the Tennessee and thence up the Ohio and Cumberland to the same

neighborhood; and on February 14 the attack upon Donelson commenced. On February 16, the Confederate general Simon B. Buckner, who had been left in command by the flight of his superiors, Generals Gideon J. Pillow and John B. Floyd, was compelled to surrender. He had asked, under a flag of truce, for an armistice to "settle the terms of capitulation." But Grant replied, in a few pithy words, which of themselves had as great and perhaps greater effect than battles, "No terms, except unconditional surrender, can be accepted. I purpose to move immediately on your works." Buckner called these terms "ungenerous and unchivalrous;" but the general public of the United States, which was electrified with the news of the victory, looked upon Grant as their deliverer, hailed him as the coming man, praised the state from which he had volunteered and the men he had led; and, instead of thinking him ungenerous or unchivalrous, took him to their hearts, told stories and made songs about him, used his name as a rallying cry, called him with familiar pride "Unconditional Surrender" Grant, sometimes United States Grant or Uncle Sam Grant, and cheered and hurraed at every allusion to him.

Grant's victory at Donelson was the first great success of the Union arms; and it put a new phase upon the war. Its immediate effect was not only to compel the Confederates to surrender their strongest position in the west and all the soldiers and arms found there, but also to drive them out of Kentucky and all the western part of Tennessee, including Nashville, the capital. General Albert Sidney Johnston, who had been in command there, was obliged to retire to the neighborhood of Corinth in the northeastern corner of Mississippi; while Grant's army moved up the Tennessee river to Pittsburg Landing on the Tennessee side of the state line, but not far from Corinth. At that point, and at a place a short distance above it called Shiloh, was fought on April 6 and 7 another great battle, called sometimes that of Pittsburg Landing but more commonly that of Shiloh. It lasted several days and commenced with success for the Confederates; but in the course of it, their general, Albert Sidney Johnston, was killed; and there was no one equal to him to retrieve the day. General Grant had been at first largely outnumbered but,

Mississippi to New Orleans. There were two renowned forts on opposite banks of the river about half way up, one Fort St. Philip on the north or left bank and the other Fort Jackson on the south or right bank. These were fully armed and equipped and were supposed to be practically impregnable. Farragut commenced to bombard them on April 18 and continued his firing upon them for five days. On the morning of April 24, finding that the forts still held out, Farragut conceived the bold design of running past them. As he brought his fleet up, the Confederates opened a tremendous fire from the forts and their vessels. They also cut adrift and sent floating down the river against him rafts and steamboats ablaze with burning cotton. They likewise sent against him an iron-clad ram called the *Manassas*. But in vain. Though with considerable loss, Farragut ran the gauntlet of the forts; passed the fire-vessels; destroyed or silenced his antagonists; overcame every obstacle and, steaming up to the city, captured and turned it over to the command of General Benjamin F. Butler, who followed with some fifteen thousand Union troops and put things in order as he advanced. This Butler, who was the author of the famous designation of escaped or seized negro slaves as "contraband of war," was one of the strongest, ablest, most determined, most self-sufficient and most unscrupulous characters of the age. He was a man of extraordinary power, who seemed to court and fatten on abuse; and he succeeded so well in exciting rebel spleen that towards the end of the year 1862, the Confederate president, Jefferson Davis, was badgered into the weak absurdity of declaring him an outlaw and a felon.

During all this time, President Lincoln, who by the terms of the constitution of the United States was commander-in-chief of the United States army, was searching for a general. He was heart and soul in favor of the Union; but he knew little or nothing of military affairs and made many mistakes before he at last learned by experience and settled down upon the best man for the place. The country, and particularly that portion under arms, was divided up into military departments, each administered by its own general in subordination to the president. But, under the president, the major-general at Wash-

ington was at the head of the army, and he was supposed to have control and supervision over all the departments and to direct the general conduct of affairs. General Scott had occupied this position, and after him McClellan; but as has been seen McClellan was found wanting. Meanwhile there were many changes in the departments—and some for the worse. This was especially the case when General Grant was virtually superseded in the command of his army after the battle of Shiloh by General Henry W. Halleck, and as a consequence the progress of Grant's victories in the west was, for a time at least, paralyzed.

McClellan was still in the Virginian peninsula between the York and James rivers with a couple of hundred thousand men and very slowly moving up towards Richmond. General Banks had just cleared the Shenandoah valley of the enemy and was on his way to join McClellan, when Thomas J. Jackson, or "Stonewall" Jackson as he was generally called, one of the ablest and most remarkable men of the war, suddenly broke into the valley and made an attack upon the forces under General James Shields, whom Banks had left behind. Jackson, who was a native of Harrison county, Virginia, born in 1824, was a West Point graduate and had seen some service as a lieutenant in the Mexican war. He subsequently became a professor of natural philosophy in the Virginia Military Institute at Lexington and continued there until the breaking out of the rebellion in 1861, when he accepted service in the Confederate army. His first exploit was to capture the arsenal at Harper's Ferry on May 3. This put him in command of a Confederate brigade; and it was the magnificent military management of that brigade in the face of a terrific fire at Bull Run that occasioned the remark, "There stands old Jackson, like a stone wall," and gave him the from-that-time-famous designation of Stonewall Jackson. With a comparatively small force but with a military genius which more than made up for its deficiency as against his antagonists, Jackson first attacked Shields so as to compel Banks to take the back track and return to the Shenandoah. As soon as he had disposed of Shields for the time, he turned on Banks and drove him across the Potomac and out of the

valley. He then returned and, after putting a stop to the advance of General John C. Fremont who was bringing up an army from the west to support Banks, again attacked Shields and drove him off, thus brilliantly saving the Shenandoah for a time at least for the Confederacy and creating great consternation at Washington and in the federal councils. The ulterior effect, which was of great importance, was to detain a large portion of the federal forces that had been intended to aid McClellan from joining that general; while Jackson himself, with a watchfulness and celerity that knew no cessation, made his way across the Blue Ridge and joined the main Confederate army in front of Richmond.

The outcome of McClellan's strategy in the Virginian peninsula, after several battles that were of no great importance, was to get his magnificent army separated into two divisions by the little river Chickahominy, which suddenly rose and became a large stream. While in that condition, his left wing was attacked at Fair Oaks and Seven Pines by the Confederates under General Joseph E. Johnston. The result was a fierce contest, that lasted several days without any very great success on either side; but as one of its consequences General Johnston was wounded and was succeeded by General Robert E. Lee, who thereupon obtained and thenceforth to the end of the war retained command of the Confederate army in Virginia. It was at this time that Jackson came up and reinforced Lee; and the two together soon fell upon McClellan and drove him before them with great loss. Being caught in a divided condition, he found it impossible to unite his wings and maintain his base of supplies on the York river; and he was therefore obliged, in the face of a victorious enemy, to change his base to the James river. In doing so, he was compelled to fight the series of engagements known as the "Seven Days' Battles," in which the losses were over fifteen thousand on each side, before he could reach a position of even tolerable safety.

Lincoln, in his search for a general to supersede McClellan, called General Halleck to Washington, apparently for the benefit of his advice, and appointed General John Pope, who had done good work at Pea Ridge and Island Number Ten in the west,

to take general command of the long Union line extending from McClellan's position on the James river to the Shenandoah. On the western end of this line was Banks. Lee and Jackson, as soon as McClellan found a resting-place on the James, turned their attention to the other end of Pope's line and started operations there with a sudden and dashing attack by Jackson upon Banks at Cedar Mountain. Lee followed immediately in the wake of Jackson; and the two joining forced Banks back and then attacked Pope. McClellan had been ordered to join Pope; and a part of his force arrived in time to take part in the second battle of Bull Run. But it did no good; Pope was defeated; his army routed; Washington exposed, and the whole north driven wild with excitement and apprehension. Lee at once led his triumphant army across the upper Potomac into Maryland. McClellan, gathering up the defeated Union armies, followed Lee and, on September 17, 1862, fought the desperate battle of Antietam creek, which, though with terrific loss on both sides, resulted in favor of the Union armies, which held the field. The Confederates were obliged to recross the Potomac; and they leisurely moved up the Shenandoah valley to recuperate. They were allowed to go and were not pursued.

By this time, Lincoln, finding that Pope did not meet expectations and being more and more dissatisfied with McClellan, appointed General Ambrose E. Burnside in his place. But what McClellan lacked of push, Burnside lacked of caution. He seemed determined that there should be no failure for want of daring. But he was rash. He at once advanced towards Richmond and, upon reaching the Rappahannock at Fredericksburg, found Lee in position on the hills beyond the town. Without hesitating and apparently without counting the danger, he immediately on December 13 crossed the river and, forming his forces into three divisions, attempted to storm the intrenched heights. The result was a terrible slaughter of Union troops—the loss amounting it was said to twelve thousand men—and the complete defeat and rout of the Union army. Burnside's disaster was greater than Pope's had been and much greater than any that McClellan had suffered. Lincoln thereupon made another choice of a general and on this occasion settled upon

General Joseph Hooker, a dashing soldier, formerly of California, who had acquired and was generally and widely known by the familiar title of "Fighting Joe Hooker." Being appointed in Burnside's place, Hooker at once withdrew the Union forces from the neighborhood of the Rappahannock to that of the Potomac, and for several months devoted his time and attention to reorganizing and strengthening his army before advancing again towards Richmond. And thus at the end of 1862, the contending armies in Virginia occupied much the same positions as at the beginning of the war. The military operations of the Confederates in that part of the country had as a rule been able and effective, while those of the United States had been a series of blunders from the start. In the west it was different: there the Union generals won the successes and the Confederates committed the blunders. But even there, for the time at least, there was sufficient meddling by the administration, or by persons who had the ear of the administration, to seriously jeopardize the Union cause, which in the hands of such men as Grant, Thomas, Buell, Farragut and Foote was doing well.

Halleck's interference with Grant by assuming general command of the army at Corinth and leaving Grant in only a subordinate position might have led to very serious consequences. The main thing that appears to have recommended Halleck to Lincoln and his secretary of war Stanton was not any battle he had fought or active service he had performed; but his talk about war. McClellan, Pope, Burnside, Hooker and others had each done something; but Halleck was a great military scholar and talked learnedly. He was so effective and weighty in this respect that he got, among the hangers-on about Washington, to be known by the name of "Old Brains;" and the designation afterwards stuck to him—his friends and his enemies each using it, one side in a favorable and the other and greater number in an opposite sense. To understand the effect of his interference, it is to be borne in mind that when Grant took Donelson, he had broken the Confederate line of defense in the west and made a terrible breach in it. The Confederates had fallen back to Corinth and Grant, assisted by Buell, had driven them out of that place. It was clearly the part of the Union

forces to prevent a new line of defense from being formed; and after many delays Buell was sent eastward with his army to seize Chattanooga, a strong place on the Tennessee river near the northern line of Georgia, and prevent it from falling into the enemy's hands. But there was so much bad management that, before Buell could reach the place, it was occupied by the Confederates under General Braxton Bragg; and it took a long time and the expense of much treasure and blood before they could be dislodged. The possession of Chattanooga as a base enabled the Confederates to make an attempt to repair their losses in the west by sending two armies, one under General Kirby Smith from the eastern part of Tennessee and the other under Bragg from Chattanooga, to invade Kentucky and threaten the southern parts of Ohio and Indiana. Several battles took place, one near Richmond in Kentucky on August 30 and one at Perrysville on October 8, with the general result that the Confederates were driven back. About the same time several attacks were made upon the Union armies at Corinth and its neighborhood; but they were repelled by General Rosecrans. One of his battles was that of Iuka, fought on September 19; another that of Corinth, fought on October 4, and the other that of Stone river, which commenced on December 31, lasted several days, engaged forty thousand men, with a loss of more than ten thousand on each side, and resulted in hurling the rebels back behind their line at Chattanooga.

Grant meanwhile had fixed his attention upon Vicksburg on the east bank of the Mississippi about half way between New Orleans and Memphis, the only point on the river remaining in the hands of the Confederates but the strongest and most important position in the southwest. His plan was to march against it with his army on the east side, while General William T. Sherman with forty thousand men and Admiral David D. Porter with a fleet of gun-boats were to descend the river from Memphis to his support. But the stand, which the Confederates were enabled to keep up in Mississippi, chiefly on account of their possession of Chattanooga, prevented Grant from marching on Vicksburg as he had intended; so that, when Sherman and Porter reached and attacked the bluffs north of that city, Grant

could not aid them; and on December 29, after suffering a heavy loss, they were obliged to return to Memphis, leaving Vicksburg still in the hands of the enemy and at that point blocking the navigation of the river. On the Atlantic coast, during the year 1862, and particularly after the destruction of the Merrimac by the Monitor, a number of southern ports were taken; and by the end of the year the "paper blockade," which had at first excited so much southern amusement, was very generally enforced. At the beginning of the war, General Scott, though too old to take much active part, had planned a series of military and naval operations by which the rebellion was to be hemmed in and gradually crushed by tightening the folds of what he called his "anaconda." And by the end of 1862 the process of constriction, though it was interrupted in several quarters and required several years to finish, may be said to have seriously commenced.

As may well be imagined, all these warlike measures cost immense sums of money. To keep up and supply its armies the south absolutely impoverished itself. Nor could the north conduct its tremendous operations without fearful expenditures. Congress at the commencement of hostilities had borrowed large sums of money; and it continued to borrow as new demands arose. At its session in the summer of 1861 and at its sessions in 1862 it did little or nothing except occupy itself with measures connected, either directly or indirectly, with the prosecution of the war. Gold, being the chief standard throughout the civilized world, rose in value and could not be obtained for mere promises to pay except at a premium. By the end of 1861 the banks everywhere suspended specie payments and their notes became nearly worthless. Under these circumstances, congress, for the purpose of providing a currency, on February 25, 1862, passed a bill for the issue of United States treasury notes and by the same act declared them a legal tender for all dues except duties on imports and interest on the public debt. These notes, on account of the green ink with which they were printed, were known popularly by the name of "greenbacks" and for many years played a large part in the financial history of the country. On February 25, 1863, congress in further prosecution of its efforts

to provide a currency passed an act for the establishment of what were known as national banks, which act provided for the purchase and deposit in the United States treasury at Washington of United States government bonds, upon the faith of which the respective national banks were authorized to issue bank-notes to the amount of ninety per cent of the deposits. These notes, being thus secured, became current throughout the country and drove the old notes of private banks out of circulation. This system, and particularly as improved by a subsequent act of June 3, 1864, was eminently successful.

At the session of 1862, in addition to the legislation already referred to, congress passed several other very important acts. Though everybody felt and knew at the commencement of the war that it had been brought on by slavery, no one, and least of all the government, had any intention or idea of interfering with slavery in the southern states. But as the conflict progressed, particularly in view of the violence of the south, the abolition sentiment spread with extraordinary rapidity in the north. It was clearly seen by the most intelligent classes that the Union could not only not be restored but that its continuance could in no manner be secured without the destruction of slavery. One of the first congressional measures called out by popular feeling on the subject, and the significant precursor of what followed, was an act, passed April 16, 1862, abolishing slavery in the District of Columbia. It provided compensation for the liberated slaves of loyal citizens and temporary support of the freedmen. The next congressional act was passed July 17, 1862, and provided for the freeing of the slaves of persons engaged in rebellion against the United States or giving aid or comfort thereto. It also provided for the seizure and confiscation of the property of all rebels and expressly prohibited the surrender or giving up of any slave of a rebel master escaping into or taking refuge within any other state or within the lines of the Union army. This was followed on September 22, 1862, with a proclamation by Lincoln that all persons held as slaves in any state or designated part of a state, which should be in rebellion against the United States on January 1, 1863, should then, thenceforth and forever be free, and that the government of the United States, including the

military and naval authority thereof, would recognize and maintain such freedom. And accordingly on January 1, 1863, Lincoln issued his famous emancipation proclamation designating the states and parts of states in rebellion; and he thereby in substance forever destroyed slavery.

The emancipation proclamation, which was in effect a sort of second declaration of independence, was not, any more than its prototype, a legal instrument. Lincoln had no constitutional authority to issue it. He hesitated a long time before he made up his mind to do so. In the latter part of 1861, General Fremont, while in command in Missouri, had assumed to issue a proclamation, declaring the slaves of Missouri rebels freemen; but this was at once countermanded by Lincoln, and Fremont was superseded in his command. About the same time Simon Cameron, as United States secretary of war, advocated the arming and as a necessary consequence thereof the emancipation of slaves who had escaped and taken refuge in the north; but Lincoln was unwilling to sustain him, and Cameron withdrew from the cabinet and consented to accept the position of minister to Russia. Several other moves in the same direction were made; but Lincoln held back until he felt that public opinion demanded his action; and the result was his proclamation, which, in addition to its extraordinarily beneficial moral effect throughout the United States and the rest of the civilized world, proved as a war measure of unexpectedly far-reaching consequence. One of the great dangers of the north was, as has been stated, that the Confederacy would be recognized and aided by Great Britain and France. The proclamation, however, suddenly put an end to any chance of that kind, for the reason that its effect was to convert the war at once into an avowed war against slavery. The attitude of Great Britain and its people towards slavery made it impossible for the British cabinet to interfere in such a struggle in favor of the slave power; and Louis Napoleon dared not recognize the south without the concurrence of Great Britain. The proclamation, it is true, did not close the civil war; and the Confederates still kept up the fight with wonderful energy and skill. But, almost from the moment that the proclamation was, so to speak, forced out of the administration by public sentiment, the

character of the struggle changed. It was from that time morally impossible for the south to permanently win, and it became certain that, whatever might be the issue of a battle or a campaign and however long the conflict might be kept up, slavery was doomed and would eventually have to fall.

In the great struggle, involving the existence of the nation, which has thus been described up to what may be called its culminating point, the part played by California, though not at first very prominent, was exceedingly important. The promptness and spontaneity with which on May 17, 1861, upon the receipt of news of the firing upon Sumter, it declared the devotion of its people and their fidelity and fealty to the constitution and Union, and the unmistakable heartiness and earnestness with which it announced its readiness to maintain the rights and honor of the national government at home and abroad and to at all times respond to any requisition that might be made upon it to defend the republic against foreign or domestic foes, had a powerful effect for good upon the whole country. Nothing could have been more opportune or more effective. The furthest off of all the states, it spoke in language the most unhesitating and most positive and determined. And it meant exactly what it said. Though remote from the active scenes of the conflict and for that reason not called upon to furnish troops for immediate service against rebel soldiers in the field; yet, before the war was over, it was requested to raise several regiments and battalions aggregating more than sixteen thousand men, and no state responded with more alacrity. These consisted of two full regiments of cavalry, eight full regiments of infantry, one battalion of Native Californian cavalry and one battalion of infantry called Mountaineers, besides eight companies enlisted as a part of what was known as the First regiment of Washington territory infantry volunteers. In addition to these, which rendered almost inestimable service in keeping down unruly Indians and driving rebel guerrillas and vagabonds out of the states and territories west of the Rocky mountains and "never knew defeat," a number of Californians, about five hundred in all, whose ardor would not allow them to remain in the west, enlisted within the borders of the state for active service, became a part of the quota of the

state of Massachusetts and took honorable part in many of the great battles of the war.¹

The first call for troops from California was issued by Secretary of War Cameron to Governor Downey on April 24, 1861, and asked for one regiment of infantry and five companies of cavalry. The next was August 14, 1861, for four regiments of infantry and one regiment of cavalry. Both came by telegraph and pony express. These troops were to be placed at the disposal of General Sumner, then in command for the United States of the department of the Pacific. The calls being promptly responded to by Downey, the men were at once raised and mustered in, consisting under the first call of the First California infantry volunteers and the first battalion of the First California cavalry volunteers and, under the second call, of the Second California cavalry volunteers and the Second, Third, Fourth and Fifth California infantry volunteers. Subsequently in 1863, seven more companies of cavalry were raised, completing the full First California cavalry, and six companies constituting the first battalion of California Mountaineers; and in 1863 and 1864 the first battalion of Native Californian cavalry, and in 1863, 1864 and 1865 three other regiments known as the Sixth, Seventh and Eighth California infantry volunteers. The express object for which the first call was made in July, 1861, was to guard the overland mail route from Carson valley to Salt Lake and Fort Laramie. But it was soon afterwards found that the Confederates contemplated seizing and securing New Mexico and Arizona and, if possible, gaining a foothold in California; and a large force of them in fact advanced through Texas, captured New Mexico and penetrated Arizona nearly to the Colorado river. It was further ascertained that they proposed, after securing New Mexico and Arizona, to seize and hold a large part of Mexico, particularly Chihuahua, Sonora and Lower California. It was in view of these movements that the second call for troops was made; and two days afterwards General Sumner was ordered by General Scott to lead them on an expedition into Texas by the way of Mazatlan and through the northern states of Mexico with the

¹ Record of California Men in the War of the Rebellion, by Richard H. Orton, Sacramento, 1890, 5-12.

object of thwarting the rebel designs. Sumner, who was exceedingly desirous of active service in the field, accepted the commission, though he had doubts about its feasibility; but on further consideration, and in view of the probability of involving Mexico in trouble and especially on account of urgent remonstrances on the part of many prominent loyal citizens of California, the project was given up; and the new troops that had been raised were directed to be employed mainly west of the Rocky mountains, and particularly in relieving the companies of the regular army on the Pacific coast and enabling them to proceed east to the seat of war.¹

In October, 1861, General Sumner, who had acted so promptly and ably in suppressing all signs of disaffection on the Pacific coast as to acquire the confidence not only of all the loyal citizens of California but also of the national administration, was recalled for duty in the east; and the military command of the department of the Pacific devolved on Colonel George Wright, who about the same time became a brigadier-general. His policy was to carry out the work so well commenced by Sumner. Besides watching Sonora and particularly Guaymas, the threatened occupation of which by the rebels he was particularly anxious to prevent, he kept his eye on the territory nearer home. Finding that various secessionists in the southern part of the state were organizing with the avowed object of proceeding to Texas and that they were receiving aid and comfort from many of the native Californians of that region, he sent a couple of companies, in addition to those sent by Sumner, to look after them, to seize all the boats and ferries on the Colorado river and guard them, and also to reinforce Fort Yuma. Among these secessionists was a party headed by Daniel Showalter, the individual who the previous May had killed Charles W. Piercy in a duel and was then a fugitive from justice. There were seventeen or eighteen of them collected in the neighborhood of Warner's ranch on the border of the Colorado desert in San Diego county; they were all loaded down with arms and ammunition, and several of them carried commissions as officers in the rebel service. Whatever may have been their ulterior purposes as to

¹ Orton's Record of California Men, 12, 15, 23-29.

marching, they, unlike General Albert Sidney Johnston and his party who lost no time in getting beyond the Colorado river, waited too long in California and were swooped down upon and carried off by Major Edwin A. Rigg of the First California infantry volunteers, acting under the orders of General Wright. Showalter and his party were at once marched off to Fort Yuma, where they were kept securely guarded until afterwards, when, being by that time of no danger to anybody but themselves, they were exchanged and joined the Confederates. Showalter subsequently in 1866, having run a course without honor to himself or credit to the state that gave him birth, died at Mazatlan.¹

In the early part of December, 1861, on account of the seizure of New Mexico and a part of Arizona by the Confederates and particularly on account of their threats of advancing further, General Wright proposed the organization of an expedition, consisting of a number of the California volunteers already mentioned and constituting the body afterwards known as the "California Column" to dislodge and drive them out. In his letter, dated December 9, suggesting this expedition, he stated that the force he proposed sending and which was then in southern California amounted to about one thousand five hundred men; and he added, speaking of them and the other companies raised in California, that he had "never seen a finer body of volunteer troops." In accordance with his proposition, approved by General McClellan, the California Column was organized and assembled at Fort Yuma in April, 1862. It consisted of the First California infantry, ten companies, Colonel James H. Carleton, who was placed in general command; the First California cavalry, five companies, Colonel Edward E. Eyre, and a light battery of four brass field pieces. It was subsequently reinforced by the Fifth California infantry, ten companies, Colonel George W. Bowie. On April 28, soon after the advance of the column had started eastward on its campaign from Fort Yuma, Carleton was promoted to the rank of brigadier-general and his position of colonel given to Joseph R. West, though the information did not reach them for some time afterwards. The first brush with the

¹Orton's Record of California Men, 19, 20, 40; Davis' Political Conventions, 653.

enemy was at Picacho Pass, where Lieutenant James Barrett of the First California cavalry and two of his men—the first Californian volunteers who lost their lives in the war—were killed. Soon after the skirmish at Picacho Pass, the main body of the California Column came up; and it advanced thence, in pursuit of the enemy, to Tucson, which it occupied on May 20—the Confederates having abandoned it and retreated to New Mexico.¹

On June 8, 1862, in view of the chaotic condition of civil affairs and the utter absence of civil authority in the country, General Carleton, who however still called himself colonel, issued a proclamation from his head-quarters at Tucson, assuming control as military governor of Arizona until further order; declaring the territory under martial law; laying down certain fundamental rules of government to be observed by the people, and providing for the trial and punishment of offenses. This, on June 28, 1862, was fully approved and confirmed by General Wright. Meanwhile on June 21, Colonel Eyre, with one hundred and forty of the First cavalry, started from Tucson and on July 4, after a difficult but admirably executed march of about three hundred miles, arrived at and took possession of Fort Thorn on the Rio Grande river. There the stars and stripes were immediately raised; and Eyre prepared to cross the river and afterwards invade the "sacred soil" of Texas. He succeeded in getting across and securing Las Cruces, Mesilla and Fort Fillmore and also Fort Bliss in Texas and would doubtless have done much more, as he was close upon the heels of the fleeing Confederates, who were disorganized, disheartened and demoralized. But he was hampered by instructions from General Edward R. S. Canby, then at Fort Craig in command of the department of New Mexico, who had ordered him to stop. Upon the receipt of the news at Tucson of these successes, the main body of the California Column was ordered forward to the Rio Grande; and the head of it arrived at Las Cruces on August 10. On August 22 the stars and stripes were hoisted by Captain John C. Cremony of the California Column over Fort Quitman, and not long afterwards by Captain Edward D. Shirland over Fort Davis, one hundred and forty miles further into the heart of Texas. The result was the

¹Orton's Record of California Men, 46, 47.

re-opening of the southern overland mail route and the re-occupation, for the Union, of the military forts in Arizona, southern New Mexico and northwestern Texas. Thus were the proposition and instructions of General Wright carried out; and thus did the California Column show itself equal to any service performed in the war.¹

¹Orton's Record of California Men, 55-67.

CHAPTER XIII.

STANFORD (CONTINUED).

THE loyalty of California and its people to the Union, which had been manifested so decidedly at the commencement of the war, knew no diminution but rather continued to increase during its progress—and this notwithstanding reverses on the battle field that encouraged secession. At the state election for members of the legislature on September 3, 1862, shortly after the disastrous "Seven Days' Battles" in Virginia in which McClellan was sore pressed by Lee and Stonewall Jackson, the popular vote was very largely in favor of the administration represented by the Republican and Union tickets. All of the senators elected on this occasion and almost all of the assemblymen were of this complexion, so that on joint ballot out of forty senators and eighty assemblymen there were about ninety-five Republican or Union administration men, fourteen or fifteen Democrats, who claimed to be Union men but anti-administration, and eleven secessionists. The legislature of 1863 met at Sacramento on January 5; and one of its very first acts was a very strong Union resolution, which was introduced into the senate by Charles B. Porter of Contra Costa county and adopted in that body on January 6 by thirty-one ayes against eight noes and in the assembly on January 11 by sixty-four ayes against eleven noes. It indorsed Lincoln's emancipation proclamation as necessary for the success of the efforts of the government to suppress the "desperate and wicked rebellion" and re-establish the authority of the national Union, to which measure California pledged the cordial and earnest support of its people.¹

On January 7, 1863, Governor Stanford presented his first annual message. He deemed it proper to express gratitude to

¹ Senate Journal, 1863, 23; Assembly Journal; 1863, 84.

the Benignant Power that had preserved the state from the perils afflicting so large a portion of the common country and secured to it peace and quietude, undisturbed by any political commotion and blessed with a season of general health. He referred to the floods of the previous winter as a calamity unprecedented in the annals of California. He next referred to the state debt as amounting, including all bonds and claims, to a little over five and a half million dollars. The indebtedness of the general fund on January 10, 1862, was a little over five hundred and thirty-five thousand, while the receipts from January 10 to December 1, 1862, were a little over eight hundred and twenty-nine thousand, leaving the excess of receipts over expenses for the year 1862 a little over ninety-one thousand dollars.¹ But, notwithstanding this excess and notwithstanding current expenses had been greatly reduced, the general fund was largely behind; and he recommended for the next year a tax for state purposes larger than the estimate of twenty-three cents, in addition to the sixty-two cents imposed by the revenue act of May 19, 1861, on each one hundred dollars of valuation, as made by the state controller. In explanation he declared his object to be "to put the treasury upon a strict cash basis, believing as I emphatically do in the 'pay as you go' system wherever it is practicable." He attributed some of the deficiency in the general fund to a decision of the supreme court of the state declaring unconstitutional a stringent and oppressive statute passed April 26, 1862, purporting "to protect free white labor against competition with Chinese coolie labor" by imposing a capitation tax of two dollars and fifty cents per month upon every person, male or female, of the Mongolian race of the age of eighteen years and upwards residing within the state.² He referred to Indian troubles, particularly those in the northwesterly counties, and said there should be absolute protection afforded against the hostiles, and he believed the object might be accomplished at far less expense than that incurred by the general government "under its miserable management of Indian affairs in California." He spoke of the military training of Californian youth as a necessity; thought the

¹Senate Journal, 1863, 27-29.

²Senate Journal, 1863, 30, 31; Stats. 1862, 462; *Lin Sing vs. Washburn*, 20 Cal. 534.

reclamation of swamp lands up to that time not much of a success, and was of opinion that the statutes ought to be revised and codified. And in conclusion he pronounced Lincoln's proclamation of emancipation not only a necessary war measure but also a great moral declaration, insuring for the future the entire abolition of slavery throughout the country. He called it "an act that will inure to his lasting fame and to which the future statesman will recur as one that blotted out an ignoble stain from our national escutcheon and gave a new impulse to human liberty and human progress."¹

Stanford at the same time called attention to the fact that Delos R. Ashley, the treasurer of state, had in the previous September paid the first installment of the direct tax, apportioned to California by the act of congress of August 5, 1861, and assumed by the state, in legal tender notes in lieu of coin paid into the treasury by the people for that purpose. By this payment of greenbacks, he had saved the state over forty-four hundred dollars—the difference between sixty-three thousand eight hundred and thirty-nine dollars and thirty-one cents in coin and the same amount in legal tender notes, then nearly eight per cent below par in California. This Stanford had deemed entirely unauthorized and had written to the United States authorities, expressing deep mortification and earnestly assuring the general government that the loyal people of California had no desire to benefit themselves at its expense. He had been answered that the government had advisedly accepted legal tender notes for the tax; and Ashley afterwards showed that the government, in imposing the tax, had contemplated its payment in legal tender notes; that all the other states paid their proportions in such notes, and that, if California paid in coin, it would pay more than its proportion. Ashley further said that the state was not making a gratuity but simply complying with a strict legal obligation; and he added that, if the state felt able and desired to make a direct donation in addition to the tax, it would be a praiseworthy act and the United States would receive the benefit of it—which would not be the case if coin were paid for the tax instead of notes, for the reason that, if so received, it would have to be paid out at the

¹ Senate Journal, 1863, 33-46.

same nominal value as notes.¹ Notwithstanding this exposition, Stanford brought the matter before the legislature; and committees were appointed by both houses to investigate it. By the time they reported, Ashley had paid the remainder of the direct tax in legal tender notes and thereby saved the state altogether nearly twenty-five thousand dollars. But, after much bother and considerable expense without accomplishing any good, the legislature put a quietus upon the controversy by appropriating the whole amount so saved the state as a "military recruiting fund" to assist in filling up the regiments of California volunteers.²

In addition to the appropriation last mentioned, and in the same loyal spirit, the legislature of 1863 appropriated one hundred thousand dollars to be expended in equipping for service the volunteer soldiery of the state with the object of providing a "more efficient state of defense against foreign or internal foes." It also appropriated six hundred thousand dollars as a "soldiers' relief fund" to be used in compensating soldiers of the California volunteers, in addition to the pay allowed them by the United States.³ It likewise appropriated five thousand dollars for the benefit of the widow and children of Colonel Roderick Matheson of Sonoma county, who had volunteered in a regiment of Californians raised at the breaking out of the war in New York and fell fighting at the head of the regiment at Crampton Gap in Maryland on October 2, 1862, and five thousand dollars to aid in the completion of the monument in Lone Mountain cemetery in San Francisco to the memory of United States Senator David C. Broderick, who was by many looked upon as a martyr to the Union cause.⁴ At the same session, acts were passed making it a misdemeanor to display rebel flags or devices and declaring them public nuisances to be abated by any peace officer; also making it a felony, punishable with death if the jury should so direct, to fit out, arm, furnish, provide or equip within the state any vessel for piratical or privateering purposes or intended to cruise against or commit hostilities upon the citizens of the United States or their property, or to take part in any hostile

¹Senate Journal, 1863, 30, 50; Appendix No. 2, 23-29.

²Senate Journal, 1863; Appendix, Nos. 15 and 16; Stats. 1863, 246.

³Stats. 1863, 477, 662.

⁴Stats. 1863, 250, 302.

expedition of any kind, or to accept or deliver any commission or letter of marque with such intent. It was likewise declared a misdemeanor to profess adherence to the enemy or indorse, defend or cheer any attempt of any person to subvert or destroy the lawful authority of the United States in any state thereof. Acts were also passed to exclude traitors and alien enemies from the courts of justice in civil cases by requiring plaintiffs, if demanded by defendants, and attorneys in all instances to take the oath of allegiance, and requiring teachers of the public schools to take similar oaths.¹

In respect to most of these acts, it can hardly be said that they accomplished any good purpose, except perhaps to indicate the general public opinion and sentiment. As in all great popular movements, in which there is much feeling, zealots and fanatical partisans are almost sure for a time at least to be thrown to the top and almost always succeed in carrying things too far. In view of the United States laws and the care and watchfulness of United States military officers, it was unnecessary for the state to pass so many statutes that could accomplish no good but were annoying as well to the loyal as to the disloyal. There were in fact no dangerous secessionists in the state that were not in very short order taken in hand by the United States officers. At the beginning of hostilities most of those, who might have done harm, migrated to the Confederacy, including General Albert Sidney Johnston, Judge David S. Terry, Calhoun Benham and others; and they succeeded in reaching their destination without being stopped. Afterwards Daniel Showalter and a party of his friends, who were bent on mischief and might have done some, were, as has already been stated, seized and their career nipped in the bud before they could do any harm. There were a few others who talked loudly and violently but were hardly dangerous. One, and the most prominent of these, was E. J. C. Kewen of Los Angeles, formerly attorney-general of the state and afterwards a sort of missionary in the southern and southwestern states for Walker's pro-slavery, filibustering schemes in Nicaragua. Sympathizing as he did with the south, from which he had come, and being a good stump-speaker, he ventilated his secession

¹ Stats. 1863, 350, 490, 566, 727, 755.

proclivities a little too freely to his Los Angeles neighbors in October, 1862, and as a result was arrested by the United States authorities, carried to San Francisco and clapped into the fort on Alcatraz Island. His prison walls and possibly the voices of the wild waves, that were beating on the bare rocks on every side, appear to have soon cooled his ardor; and, after two weeks incarceration, he was released upon subscribing an oath of allegiance to the United States and giving a bond in the sum of five thousand dollars that for the future he would be more cautious in his utterances.

Kewen had been elected a member of the assembly from Los Angeles in September, 1862, and at the beginning of the session of 1863 presented himself and was sworn in. A few weeks afterwards, January 26, Thomas Fitch, a stump-speaker on the Union side who had been elected to the assembly from El Dorado county, introduced a resolution into that body asking for a committee to inquire whether Kewen had not been guilty of publicly uttering treasonable language or committing treasonable acts of a character to prove him disloyal to the government and unfit to occupy a seat as a member of the legislature of a loyal state. It is not unlikely that the resolution would have been adopted, had it not been for Silas W. Sanderson, another member from El Dorado county, one of the ablest, most liberal-minded and most judicious men in the state, afterwards chief justice of the supreme court. He moved as a substitute resolution that all charges of disloyalty against a member, that had been investigated by the civil or military authorities of the federal government, ought not to be entertained, and that any investigation of such charges by the assembly was wholly uncalled for, impolitic, unwise and contrary to the spirit of that clause in the constitution, both federal and state, which provided that no person should be twice put in jeopardy for the same offense. The substitute was at once adopted and then the whole Kewen matter was laid on the table—not to be taken up again—by a vote of thirty-four ayes to twenty-nine noes.¹

But whenever a fair opportunity presented itself of putting a Union man in place of one who was not sound on the Union

¹ Assembly Journal, 1863, 138, 139.

question, it was readily embraced by the legislature of 1863. An opportunity occurred in January to fill a vacancy in the office of trustee of the state library, made by the resignation of John R. McConnell, who had been Lecompton candidate for governor in 1861; and the position was filled in joint convention by the election of Dr. John F. Morse, an anti-Lecompton Union man. Stanford himself did not hesitate to appoint out-and-out Republicans to all the offices within his own gift, though there were none of much importance. But the principal office to be filled at this session of the legislature—and more important at that time than at any other to be filled by a man entirely sound on the Union—was that of United States senator in place of Milton S. Latham, who, after a short incumbency of Henry P. Haun under appointment by Governor Weller in 1859, had been elected in 1860 to fill the unexpired term of David C. Broderick, as has been already stated. The principal candidates were Timothy G. Phelps, Aaron A. Sargent, Trenor W. Park and John Conness. The first two were congressmen from California, the third a sharp and energetic attorney and the fourth a politician, who had in 1861 been an assemblyman from El Dorado county. The first three were Republicans; the last a Union Democrat.

The Union caucus, held for the purpose of agreeing upon a candidate to fill the office, began its sessions almost immediately after the commencement of the legislature. There was a very bitter contest and for several weeks little or no progress was made. The most prominent candidate seemed to be Phelps; but the others had determined adherents, and Phelps could not secure enough by five or six votes for a nomination. Towards the end of January rumors of bargain and sale on the part of Phelps and Conness and of corrupt trickery on the part of Park became rife. It was reported that F. M. Smith, an attorney, who had been elected an assemblyman from Butte county and was an adherent of Park, had been approached by Charles Watrous, postal agent of the United States and a friend of Phelps, and by him offered three thousand dollars in cash and a nomination by the Union party to a position on either the district or supreme bench as might be desired for his vote and influence in favor of Phelps. At the same time it was said that Cyrus Palmer, an

assemblyman from San Francisco, favorable to Park, had been approached by Ezekiel Wilson, an employee of the United States marine hospital at San Francisco and a supporter of Phelps, and offered anything in the political line he might ask either for himself or any friend he wished to advance, if he would bring over six more votes to Phelps; and it was added that Wilson proposed to take Palmer to Alfred Barstow and Richard Chenery, who were said to be the only agents authorized to bind Phelps, to make the necessary pledges. The subject of these rumors came up before the caucus, in the shape of an inquiry as to what truth was in them, on Tuesday, January 27, 1863, when a very extraordinary state of affairs, disgraceful to the state and to nearly all the persons connected with it, was divulged.

John G. McCullough of Mariposa, a son-in-law of Park and a newly-elected state senator, rose in the caucus and stated that on the morning of January 16 Smith of Butte had notified him of Watrous' corrupt proposition and asked him and R. C. Gaskill of Butte county, another state senator and friend of Park, to be present at noon of that day at his private apartments in the Golden Eagle Hotel in Sacramento and hear a repetition of it. He said that he and Gaskill accordingly repaired to Smith's room a little before noon and concealed themselves in a wardrobe they found there, closing the door. They presently heard a knock and Watrous came in and was welcomed in the most suave and polite manner by Smith. In a few moments Watrous commenced speaking of Smith's vote and influence for Phelps, and said that in consideration for them Smith should be elected judge of his judicial district or, if he preferred, a justice of the supreme bench. Smith remarked that he did not like contingent fees. Watrous answered that in addition he could have one thousand dollars. Smith replied that he had understood the amount of cash to be three thousand dollars, when Watrous rejoined that the amount was correct but that he could pay only one thousand down and the payment of the balance would be secured by Richard Chenery. At this moment Watrous' attention was attracted by a noise in the wardrobe, which he first tried to open and then demanded who was in it. Smith assured him that the wardrobe was a part of the hotel under the exclusive control of the proprietor, and

that there was no one in it. And with this answer Watrous went away. This statement by McCullough was in substance corroborated by Gaskill. As to the charge against Wilson, Palmer himself stated that he had been approached by Wilson on January 15; that the corrupt offer was made as reported, and that he had rejected it.

As was to have been expected these charges created great excitement. Phelps and Phelps' friends denied that he had had anything to do with Watrous' offer; and Watrous himself charged that, instead of his approaching Smith, Smith had approached him and made the corrupt offer to desert Park for the consideration named. Phelps' friends immediately began to ask whether men like Smith, McCullough and Gaskill, who would engage in such a scheme as the "wardrobe business" as it was called, were worthy of belief and particularly under the circumstances that they had waited eleven days and until Phelps was on the point of being elected before making the exposure. They charged that the whole scheme was a trick conceived in the fertile brain of Park, who finding himself about to be defeated had got it up and then for eleven days held it "in terrorem" over the Phelps men, proposing to say nothing if they would vote for him, but otherwise to expose it and prosecute them criminally. These threats having had no effect, they said, upon the Phelps men and an agreement having been made with Conness to throw his support to Phelps and elect him, Park had brought forward his bomb and exploded it. Thus there were charges and counter-charges, criminations and re-criminations; and the more the pool was stirred the filthier it appeared. The Union caucus deemed it necessary to make a sort of investigation; and witnesses were called and testimony taken; but, with reciprocal asseverations on one side and denials on the other and no power in the caucus to proceed in a judicial manner, there was nothing of importance done. On January 29, a resolution was introduced into the assembly for an investigation before that body; but it was immediately laid on the table—whence it was never taken up—by a vote of forty-two ayes against twenty-nine noes. And there the matter dropped.¹

¹ San Francisco newspapers of January 28, 1863, and following days; Assembly Journal, 1863, 151

Whatever may have been the truth as to the wardrobe business, it had the effect of destroying Phelps' chances of election. It however did not help Park, who it was said by the Phelps men had been "hoist with his own petard." But the result was the throwing of Conness to the surface—a man who, though for the Union, had, as a Democratic politician, done much to injure the Union party and in whose politics many of the people had no great amount of confidence. He was nominated by the caucus and, on February 10, elected in joint convention by a vote of ninety-eight to fifteen for Benjamin Shurtleff, who represented the Breckenridge Democrats.¹ The two incumbents then holding office were Milton S. Latham, whose place Conness was to fill, and James A. McDougall. The latter had been elected in 1861 as a Union man in place of Gwin and was to serve until 1867, but he had become very dissipated, and no reliance could be placed on him. Latham, who had been elected to Broderick's place, though he made a few half-hearted Union speeches, never had been sound on the Union question. On the contrary, even before he vacated his office, he manifested violent opposition to the abolition of slavery and in fact, as far as he dared, took part with the south. But for some reason or other it had got to be rumored around that Lincoln contemplated appointing him, after the expiration of his office as senator, United States circuit judge for California. Upon this understanding, Chancellor Hartson, member from Napa county, on February 12, 1863, introduced into the assembly a concurrent resolution, remonstrating against such an appointment, and it was on February 18 adopted by forty-four ayes to thirteen noes; but the next day the vote was reconsidered and the resolution indefinitely postponed by even a larger vote than that by which it had been adopted. It may be added, however, that Latham never became judge.²

Another move of the Union party at this same session of 1863, in the direction of filling offices with only sound Union men, was one against Leander Quint, senator from Tuolumne and Mono counties. It appears that at the election

¹ Senate Journal, 1863, 157-160.

² Assembly Journal, 1863, 208, 219-224.

of 1861, according to the returns, Quint received two thousand two hundred and eight votes against two thousand and thirty-six for Joseph M. Cavis and was therefore given a certificate of election and took his seat. At the session of 1862, Cavis appeared and contested Quint's seat; and a committee was appointed to take the testimony presented. From this it appeared that there had been a false return as to four hundred and six votes said to have been cast for Quint at a place called Big Springs in Mono county—no such election having been held there and the returns being fraudulent and forged. Notwithstanding these facts, the senate of 1862, declared Quint entitled to the seat. In the senate of 1863, on January 20, Gaskill introduced a preamble reciting the circumstances and a resolution to the effect that Quint was not entitled. The subject-matter was referred to the committee on elections, which reported its opinion that Quint had been wrongfully allowed to retain his seat; that the senate had a right to review the action of its predecessor and change, alter or rescind the same; that the resolution of the senate of 1862 declaring Quint entitled to the office ought to be rescinded and he declared not legally elected. The recommendations were adopted, by a vote of nineteen to ten on the first proposition and sixteen to five on the second, only a month before the end of the session and after the incumbent had been sitting and filling the office for very nearly a full term of two years.¹

The series of important amendments to the constitution, making the sessions of the legislature biennial instead of annual, enlarging the terms of state officers to four years, increasing the number of justices of the supreme court to five and providing for their election for terms of ten years at special judicial elections, and making other changes in the judicial system of the state—which amendments were proposed by the legislature of 1861, agreed to by the legislature of 1862 and adopted at the election of September 3, 1862, as has been already stated—came up for canvass before the legislature of 1863. A joint resolution, declaring the amendments ratified, was adopted by the assembly on January 29. There appears, however, to have been some unimportant differences in the draft of the amendments as pro-

¹Senate Journal, 1863, 102, 287, 288, 352, 355.

posed in 1861 and those agreed to in 1862; and the senate refused to adopt the assembly resolution and amended it. The assembly declining to concur and the senate refusing to recede, a committee of free conference was appointed, which recommended the assembly resolution with some modifications; and on March 21 it was adopted, setting forth the exact words of the amendments; and they were thenceforward considered incorporated into the constitution.¹ Meanwhile a bill had been introduced in the assembly for a special election for judicial officers and superintendent of public instruction under the new system, which after passing both houses was approved on the same day that the constitutional amendments were declared adopted. This new act provided for such election on the third Wednesday of October, 1863, and every two years thereafter. A bill to amend the general election law, making it conform to the new system and fixing the time on the first Wednesday in September, 1863, and every two years thereafter, had in like manner been introduced in the senate and, after some controversy as to its terms was finally passed and approved on April 20, 1863. Still another act, in reference to the election of 1863 and providing for the voting and acceptance of the votes for state and county officers of all electors of the state then in the service of the United States, wherever they might at the time be located, was passed and approved on April 25, 1863.² This act was afterwards in 1864 pronounced unconstitutional by a majority of the supreme court; but Chief Justice Sanderson in a dissenting opinion took a contrary view; and the next year several new acts were passed for the "soldiers' vote" during the continuance of the war, which would probably have been declared valid. As, however, the war closed in 1865, before an election under them was to be held, they became inoperative.³

It was one of the glories of the legislature of 1863 that it made the first break in the illiberal and disgraceful provisions of the legislature of 1850 that no black or mulatto person or Indian should be permitted to give evidence in any court of the state in

¹ Senate Journal, 1863, 134-323.

² Stats. 1863, 91, 353, 549.

³ *Bourland vs. Hildreth*, 26 Cal. 161; Stats. 1863-4, 279, 431.

an action in which a white person was a party. These provisions, re-enacted in 1851, had been amended and enlarged in 1854, and in that shape they continued for nine years longer a foul blot upon the history of the country. Two bills, introduced into the senate by Richard F. Perkins of San Francisco on January 9, 1863, had for their object the removal of this inhibition as against negroes and mulattoes. They passed the senate. In the assembly Morris M. Estee moved a singular amendment to the effect that the testimony of negroes and mulattoes should be disregarded unless corroborated—amounting in effect to the same proscription as the original; and Chancellor Hartson moved as a substitute an equally objectionable proviso that such testimony should be disregarded unless corroborated in some material particular. But both amendment and substitute were rejected by large majorities and the acts, after passing the assembly, were promptly approved by Stanford, one on March 16 and the other on March 18, 1863.¹ Even as it was, the fact that the propositions of Estee and Hartson received about thirty votes manifested what prejudices against negroes still prevailed; and the fact that the new acts contained express inhibitions against the testimony of Mongolians and Chinese showed that the amendments adopted, however excellent in themselves, were not the dictates of high-minded and broadly-liberal statesmanship but merely a special and exclusive movement in favor of the negro brought about by the war.² But the move was a good one and in the right direction; and it was afterwards, though it took ten years to reach that point, followed by the removal of all objections on account of nationality or color.³

The war, however, and questions more or less directly connected with it were the main subjects of consideration in the legislature of 1863. The Californians in general were in favor of a vigorous and unyielding prosecution of the conflict to the end, without reference to how long it would take or how much it might cost. They believed in fighting it out. It was therefore with great satisfaction and much pride that they heard of the

¹ Stats. 1863, 60, 69.

² Assembly Journal, 1863, 307, 312.

³ See *People vs. McGuire*, 45 Cal. 56.

promotion of their old fellow-citizen and favorite, General Joseph Hooker or "Fighting Joe Hooker" as they preferred to call him, to the head and leadership of the armies of the United States in the field. This feeling was especially manifested in the legislature by the adoption on March 23 of a concurrent resolution, recognizing the fame reflected on the state by Hooker's splendid services in the national cause and conveying to him an expression of its satisfaction and confidence.¹ About the same time the governor was requested, by resolution of the senate, to immediately telegraph to the war department at Washington to ascertain whether the general government would furnish California for its use with five complete bronze field-batteries, consisting each of two rifled twelve-pounders, two smooth bore six-pounders and two twelve-pounder howitzers, together with small arms, accouterments and equipments for infantry and cavalry, not exceeding the value of twenty-nine thousand muskets, and also such amount of ammunition as might be deemed necessary.² On March 25, Governor Stanford answered that he had telegraphed to the United States secretary of war and received a reply, which it was not advisable to make public but in which it was stated that the general government would "furnish the arms required—and more." He also stated that he had received a dispatch from United States Senator James A. McDougall, dated March 23, 1863, that the general government would do all that was demanded for the defense of the Pacific coast.³

This action in reference to taking measures for the defense of California, as well as the passage of the before-mentioned act of April 25, 1863, to prevent the arming and equipping within the jurisdiction of the state of vessels for piratical or privateering purposes, was in part at least induced by the fact that on March 15, 1863, a schooner, named the J. M. Chapman, had been seized in the harbor of San Francisco while sailing or about to sail on a cruise in the service of the Confederacy and against the commerce of the United States. At the same time that the vessel had been seized, a number of men connected with it had been

¹ Stats. 1863, 795.

² Senate Journal, 1863, 303.

³ Senate Journal, 1863, 341.

arrested, among whom were Ridgely Greathouse, Asbury Harpending, Alfred Rubery, William C. Law and Lorenzo C. Libby. These soon afterwards were indicted by the grand jury of the United States under an act of congress of July 17, 1862, for engaging in and giving aid and comfort to the rebellion. At the trial, which took place at the October term, 1863, of the United States circuit court—a *nolle prosequi* having been entered as to Law and Libby and they become witnesses for the prosecution—it appeared that Harpending, a native of Kentucky, and Rubery, a native of England, had for some time contemplated the fitting out of a privateer at San Francisco for the purpose of taking several of the mail steamers, plying between that port and Panama, and other vessels. With this object in view, Harpending had gone to Richmond and procured from Jefferson Davis, president of the Confederacy, a letter of marque purporting to authorize him to prey upon the commerce of the United States and to burn, bond or take any vessel of its citizens. In January or February, 1863, Harpending made the acquaintance at San Francisco of Law, a ship-captain, and induced him to take part in the scheme. Law pointed out the schooner *J. M. Chapman*, a vessel of about ninety tons and a fast sailer which had just arrived from the Atlantic coast, as well adapted for the purpose contemplated. Harpending thereupon introduced Greathouse as a capitalist; and, after several meetings between the conspirators, Greathouse purchased the schooner and furnished money to purchase arms, ammunition and stores, and to engage a mate and crew. The next morning Law, who was to be captain, took charge of the vessel, informed Libby of the project and induced him to go as mate, and engaged four seamen and a cook.

All this time Greathouse pretended to be acting in the interest of the "Liberal party" in Mexico; and under this pretext the arms and ammunition were purchased, packed in cases marked "oil mill" and "machinery" and shipped as quietly as possible. At the same time there was also shipped a number of uniforms, a large amount of lumber intended for the construction of berths, a prison room and a lower deck; and the remaining space was filled with a cargo of merchandise for Manzanillo. Meanwhile the conspirators, after much discussion, began dividing their

prospective spoils; and it was agreed that Greathouse, in consideration of the solid gold he had advanced, was to have the largest share, Harpending the next largest, Law the next, Rubery fourth and Libby fifth. The plan of the cruise was that on the night of Saturday, March 14, Harpending and fifteen fighting men were to go on board and conceal themselves and that on Sunday morning, March 15, the vessel was to sail and proceed to the island of Guadalupe, some three hundred miles off the coast of Lower California, where Harpending and his fighting men were to land. The vessel was thence to proceed to Manzanillo in Mexico; discharge its merchandise; return to Guadalupe; fit out for privateering purposes; proceed again to Manzanillo, where the men were to be enrolled and their names inserted in Harpending's letter of marque, and then commence their depredations. Their first prize was to be the Pacific mail steamer from San Francisco to Panama with its treasure. With this steamer, they were to capture a second steamer with its treasure; next they were to capture a vessel then engaged in recovering treasure from the wreck on the Mexican coast of the steamer Golden Gate; then they were to go to the Chincha Islands; capture and burn all the United States vessels there, and thence proceed to the China sea and finally into the Indian ocean. In pursuance of this plan, the schooner was placarded to sail for Manzanillo; and Law cleared at the custom-house for that port, signing and swearing to a false manifest. On the night of March 14 all the conspirators, including Harpending and his men, went on board; and no one was absent except Law, who remained on shore with the understanding, however, that he was to make his appearance before morning.

In the course of the night, Rubery heard some vague rumors that the vessel was to be overhauled; and in the gray of the dawn, as Law had not yet made his appearance, he proposed sailing without him. Upon a hasty consultation it was so ordered; and Libby, acting under instructions of Greathouse, cast off the lines and began working the vessel out from the wharf into the stream. The mainsail was partially hoisted. But no sooner had the wharf been left than two boats were

observed putting off from the United States sloop-of-war Cyane, then lying at anchor in the bay, and heading towards the schooner. Libby pointed them out to Greathouse and stated what they meant. Rubery thereupon insisted on running up all the sails, but Libby replied that there was no wind and it would be useless. In a few minutes afterwards the Cyane's boats arrived, followed by a steam-tug; the schooner was boarded and seized by the officers of the United States, and the enterprise nipped in the bud. Just before the seizure, Law, who seems to have in the meanwhile become intoxicated, made his appearance and got on board; and he, as well as all the others, was arrested. It was subsequently shown that the United States revenue officers had been aware of the intended expedition almost from the beginning and maintained a constant watch, night and day, of the vessel. On the afternoon of Saturday, when the clearance papers for Manzanillo were procured, they increased the watch—chartering a steam-tug and putting a number of policemen on board. They also made arrangements for the assistance of the two boats with their crews from the Cyane to act in conjunction with them on a given signal, and in addition provided in advance for the reception and confinement of their intended prisoners at the fortifications on Alcatraz Island. On Saturday evening the revenue officers themselves went on board the tug; proceeded to a wharf near that at which the J. M. Chapman lay, and watched Harpending's men going on board.

Upon arresting the men on board the schooner, it was found that they had destroyed many papers; but in the baggage of Harpending and Rubery were discovered, among other documents, a proclamation to the people of California to throw off the authority of the United States; a plan for the capture of the United States forts at San Francisco and particularly Alcatraz; a draft of an oath of fidelity to their cause, and an imprecation of vengeance on all who should prove false. Immediately after the seizure and arrest, the prisoners were taken to Alcatraz and confined there. The result of the trial was the conviction of Greathouse, Harpending and Rubery. They were sentenced by Judge Stephen J. Field to be imprisoned for ten years and to pay a fine of ten thousand dollars each. Not long afterwards

Rubery was pardoned by President Lincoln at the special request of John Bright of England; and in February, 1864, while Judge Field was absent, the other defendants were released by Judge Ogden Hoffman on the claim that they were included, upon taking the required oath, in Lincoln's amnesty proclamation of December 8, 1863. In the meanwhile the schooner *J. M. Chapman* and its cargo were condemned and sold as prize of war and the proceeds distributed between the United States and the captors.¹

But, while California was thus loyal, and disposed to support the vigorous and unyielding prosecution of the conflict, there was one war measure of the administration—and one of great importance and necessary to the Union in general—which did not entirely suit it and which it only accepted in a conditional manner. This was the legal tender or greenback currency provided by the United States treasury department. California and for that matter almost all the Pacific coast was a gold and silver producing country; and it did its financial business exclusively in gold and silver coin. There being no banks of issue and no bank-notes in the land, and the popular will being unalterably opposed to the toleration of anything of the kind, all values were based upon the gold and silver standard; and there was and of course could be no depreciated currency so long as they remained the standard. Goods were bought and sold and services employed and rendered for gold and silver prices, and credits were given and accepted for the same. But when the new war legislation made treasury notes a legal tender for debts, and particularly when those notes began to largely depreciate—at one time going considerably more than fifty per cent below the gold standard—it became apparent in California that great injustice was being done by the operation of the law on the Pacific coast. Many instances occurred in which debts contracted on the gold basis were paid in greenbacks at a loss to the creditor of more than sixty per cent; and, however morally dishonest and despicable such payment was, it could not be prevented.

A remedy, which proved effective as to future bargains, was

¹ *United States vs. Greathouse et al.*, In Re Greathouse, and Proceeds of Schooner Chapman, 4 Sawyer (U. S. Circuit Court), 457-516.

found by the legislature of 1863 in what was popularly known as the "specific contract law." This consisted in a series of amendments to the civil practice act, proposed by Assemblyman Sanderson of El Dorado county, providing that contracts in writing for the direct payment of money, made payable in a specific kind of money or currency, might be specifically enforced by the courts, and judgments on such contracts be made payable and collectable in the kind of money or currency specified. The sentiment of the assembly had already been shown on February 19 by the rejection by forty-nine ayes to eleven noes of a resolution, introduced by John F. Swift, to make legal tender notes the circulating medium in the state.¹ Sanderson's amendments were introduced February 24; passed the assembly March 17 by a vote of forty-two ayes to eighteen noes; passed the senate April 14 by twenty-two ayes to eleven noes, and received the governor's approval and became a law on April 27, 1863.² But, notwithstanding the large majorities in the legislature in favor of the new provisions, there were great objections made by many persons who considered them opposed, if not to the constitution of the United States, at least to the policy of the federal government in carrying on the war and suppressing the rebellion. When the question came before the supreme court in July, 1864, however, that tribunal decided the provisions constitutional;³ and this decision was afterwards in effect confirmed by the supreme court of the United States. The result was the enforcement of specific contracts and the custom, in nearly every note or contract for the payment of money thereafter made in California, to make it expressly payable only "in gold coin." Another result was a great impetus to trade for the reason that Californian merchants and traders made large profits by buying goods in eastern markets for greenbacks and selling them on the Pacific coast for gold. Though several subsequent efforts were made to repeal the specific contract law, they all failed. It had been found beneficial and became generally popular. Oregon

¹ Assembly Journal, 1863, 208, 226, 227.

² Assembly Journal, 1863, 249, 380, 737; Senate Journal, 1863, 449, 494; Stats. 1863, 687.

³ *Carpentier vs. Atherton*, 25 Cal. 564.

and Nevada and the Pacific coast in general followed the example in this respect of California.

Though thus particular about its currency and, for the time at least, opposed to anything but coin as its circulating medium, California was exceedingly liberal with its gold to the national cause. Not only was no claim or demand upon it by the general government ever questioned or delayed, but its gratuitous and spontaneous contributions for the health and comfort and to alleviate the sufferings of the soldiers of the war were unparalleled. The movement, which became famous the world over by the name of the "sanitary commission" and of which California became the main supporter, commenced in 1862. In the disastrous campaign of that year, so many of those who were fighting for their country were stricken down by wounds or disease that the government was unable, on account of the heavy drain in other directions of its available funds, to take as complete care of them as they deserved. Under the circumstances a sanitary commission was organized in New York under the presidency of Rev. Henry W. Bellows, a Unitarian clergyman of that city, and various small contributions were solicited and obtained. Bellows proposed to Rev. Thomas Starr King, the silver-tongued Unitarian clergyman of San Francisco, whose voice had already been heard in eloquent favor of the Union cause, that something in the same line should be attempted in California; and King threw himself into the project with all his fervid soul. On the evening of September 6, 1862, a first meeting in reference to raising money for the sanitary fund was held in San Francisco; and the large sum of six thousand six hundred dollars was at once contributed. The enthusiasm became so great that other meetings were called; the most prominent citizens took part; committees were appointed; the work was systematized, and in about ten days a sum of one hundred and sixty thousand dollars in gold was raised and remitted to Bellows. In October another hundred thousand dollars were raised and remitted, and before the end of the year 1862 still another hundred thousand.

The Californian contributions, unparalleled as they were in comparison with those of other states, were in gold coin so that

they represented considerably over half a million in legal tender notes. And in the same manner, subsequent contributions were in gold coin, which continued to be, with some variations, much higher than greenbacks. In October, 1863, Bellows telegraphed to San Francisco that the sanitary commission had distributed "stores to the value of several million dollars" to all parts of the army at a cost of three per cent, and that California had been its main support. But he said that its funds were then low. Its expenses were fifty thousand dollars a month, and it could not live more than three months longer without large support from the Pacific. He suggested that if California would contribute twenty-five thousand dollars a month while the war lasted, the other twenty-five thousand could be made up in the east and the commission could continue on its existing magnificent scale of beneficence. To this, San Francisco answered that it would supply two hundred thousand dollars in 1864 and that the remainder of the state would doubtless make the sum three hundred thousand. Bellows, in his ardent enthusiasm, replied that his table was "illuminated with this resplendent message" and that in his haste to acknowledge such a glorious and patriotic continuance in well-doing he could "only stutter, 'Noble, tender, faithful San Francisco, city of the heart, commercial and moral capital of the most humane and generous state in the world!'" San Francisco almost immediately organized a subscription and sent on a sum of twenty-five thousand dollars a month. After the close of the war, the report of the commission showed that, out of four million eight hundred thousand dollars cash received, California had supplied nearly a million and a quarter and Oregon and Nevada nearly a quarter million dollars, or together nearly a third of the whole amount contributed.

Previous to the commencement of the sanitary fund in 1862, San Francisco, which had given about one-half of all the money raised in California for that beneficent purpose, had contributed over fifteen thousand dollars for the sufferers in the Sacramento flood of the winter of 1861-2. It had given before on other occasions. Taking all together, Bellows, however much allowance is to be made for his personal pride and clerical exaggeration

tion, was not very far wrong when, apostrophizing the city, he said, "Your boundaries will not hold the riches and the blessings in store for you; they must needs overflow into the hands of the needy and suffering and make your name the balm and cordial of want and sorrow," and still less so, when speaking of the "Pacific and California, with San Francisco at the head," he called them "the good Samaritan for the first time appearing in the proportions of a great city—of a whole state—of a vast area." But the state, and San Francisco with it, was very prosperous. Though the season of 1863 was one of comparative drought, having only fourteen inches of rain as against the forty-nine inches of the flood season of 1861-2, and the crops were small, yet prices were high and profits large. In the same year the Comstock lode of Nevada yielded twelve millions of dollars or twice as much as the year before. Everything seemed to have an upward tendency. On January 8, 1863, ground was broken at Sacramento for the construction of the Central Pacific or transcontinental railroad; and in the course of the same year the San Francisco and San José railroad was opened, while enterprises of many kinds were started in all directions. In San Francisco the North Beach and Mission and the Central street-railroads were completed and in Oakland the railroad wharf, twelve hundred yards long, that reached out to the deep water of the bay and obviated the necessity of navigating and the liability of sticking on the bars and mud-flats of San Antonio creek.¹

Meanwhile on Monday, April 27, 1863, the legislature, the last of the annual ones held under the old constitution before the amendments of 1862 were declared ratified, adjourned. The session had been a most important one. A great deal of far-reaching legislation had been carried through, among which, in addition to the acts already referred to, may be mentioned a number of statutes granting subsidies and privileges to the Central Pacific and other railroads, then the subjects of popular favor, that will be noticed further on. But the chief merit, if not glory, of this legislature was the hearty, sincere and outspoken support that it gave to the federal government in its conflict with

¹ Hittell's *San Francisco*, 335-339.

secession. There were many expressions of the general feeling on this subject; nearly every senator and assemblyman, except those notoriously unsound, gave voice to their loyalty on more than one occasion. And at the end of the session, besides the always-ready patriotism of T. N. Machin, speaker of the assembly, Lieutenant-governor John F. Chellis seized the opportunity of his valedictory to the senate to express himself as well satisfied with the work that had been done. "That you have promptly and courageously met every emergency," said he, "is manifest by the grateful and general response which comes back to us from the loyal people of the east, who no longer doubt the loyalty of California nor tremble lest the beloved flag of our country should be lowered to the bands of treason on this frontier post of freedom."¹

¹Senate Journal, 1863, 553.

CHAPTER XIV.

STANFORD (CONTINUED).

UNDER the amendments to the constitution adopted in 1862, and in accordance with the acts of the legislature of 1863 designed to carry out the new provisions, a general state election was to be held on September 2 and a special judicial election for judges and superintendent of public instruction on October 21, 1863. The state officers to be elected were to hold their offices for four years, except that the justices of the supreme court, after the first five had drawn lots for terms of two, four, six, eight and ten years, were to hold for ten years and the fourteen district judges for terms of six years. In view of these elections and for the purpose of adopting platforms and nominating candidates, two opposing political conventions were called, in one or other of which everybody, whatever may have been his individual principles or preferences, seemed willing for the time at least to range himself. The first or Union state convention, which represented the administration, the prosecution of the war and the Republican party, met at Sacramento on June 17, 1863. A series of ringing resolutions, substantially like those of the Union state convention of 1862, were adopted, and then nominations were proposed. Conness, who had made himself very active in the preliminary work and management of this convention, succeeded in getting Frederick F. Low preferred for governor to Leland Stanford, who withdrew before the convention was held, and over Aaron A. Sargent, who, however, received a very large vote. T. N. Machin was nominated for lieutenant-governor over John F. Chellis, and thereupon followed a complete Union ticket, including justices of the supreme court and superintendent of public instruction.

The second convention, which for the time comprised all the

enemies of the administration and all who opposed the prosecution of the war against secession, was called the Fusion Democratic state convention. It met at Sacramento on July 8, 1863. Its resolutions professed love for and a desire to preserve the Union, but charged the administration with open and avowed disregard of state rights, designated almost all its acts as arbitrary and fanatical usurpations, denounced with unqualified condemnation the emancipation proclamation and set forth as the spirit and meaning of its aims and endeavors the phrase, "The Constitution as it is and the Union as it was." It nominated John G. Downey, by an overwhelming vote, over Joseph W. McCorkle, John B. Weller and several others, for governor; Elisha W. McKinstry for lieutenant-governor, and a full ticket for all the offices to be filled at both the approaching elections. On July 13, only a few days after the adjournment of the Democratic convention, Downey issued a lengthy address to the public expounding his views on the relative rights and powers of the national and state governments; and on August 24 Low, representing the other side, also issued an address devoted to public affairs. The campaign was comparatively very short and rather one-sided—all the prestige and nearly all the enthusiasm being strongly Union.¹

Notwithstanding it was well known beforehand that the result of the election of September 2, 1863, could not be otherwise than favorable for the Union ticket, there was a very large poll. The entire count of the state was nearly one hundred and nine thousand votes, of which Low received a few hundred over sixty-four thousand and Downey a few hundred over forty-four thousand, giving Low a majority of nearly twenty thousand. Machin's majority over McKinstry was over twenty-one thousand, and so generally with the other Union nominees. At the special judicial election, which was held on October 21, 1863, there was little interest manifested, the vote amounting to less than sixty-six thousand, of which Silas W. Sanderson, Augustus L. Rhodes, John Currey, Lorenzo Sawyer and Oscar L. Shafter received a little over forty-five thousand for justices of the supreme court and John Swett nearly as many for superintendent of public

¹ Davis' Political Conventions, 193-200.

instruction.¹ Throughout the state the district, county and municipal elections resulted as a rule in the same manner, so that when the new legislature met, and the new administration commenced in the early part of December, 1863, all the officers in general, high and low, were Union men.

Meanwhile the war in the eastern states continued. Lincoln's emancipation proclamation of January 1, 1863, while it was received with extraordinary favor in the north, evoked loathing and curses from the south. It had been long delayed, but had come at last; and its effect abroad was almost as important as its effect at home. From the moment of its issue, the Union cause and the cause of the administration, which were seen to be the same thing, was recognized as the cause of freedom, philanthropy and civilization as against the virtual barbarism of slavery; and the great European powers, however they may have been disposed before, were obliged by the force of public opinion to so regard it. There was from that time no longer any danger of the Confederacy receiving European aid; and the war was left to be fought out without anything like avowed foreign intervention or interference.

Towards the end of April, 1863, General Hooker, who had been placed in command of the army of the Potomac, after spending several months in reorganizing his forces, marched towards Richmond. He had about one hundred and twenty thousand men. Sending a portion of them under General John Sedgwick to cross the Rappahannock below Fredericksburg, he crossed with the main body a few miles above and advanced to Chancellorsville. There he was met by Lee with an army of about one-half Hooker's number; and a desperate battle took place, which commenced on May 1, lasted several days and resulted in a victory for the Confederates and the discomfiture of the Union army. It was known as the battle of Chancellorsville. The main features of the fight consisted in a well-planned and admirably conducted attack by Stonewall Jackson upon Hooker's right wing, which he took by surprise and drove back in confusion. By this time Sedgwick, who had taken the heights of Fredericksburg, came up on Hooker's left, when Lee attacked him with his

¹ Senate Journal, 1863-4, 18; Davis' Political Conventions, 201.

main force and compelled him to retire. On May 5 Hooker was obliged to recross the Rappahannock. His losses in the four days' fighting were about sixteen thousand. Those of the Confederates were about twelve thousand; but among them was Stonewall Jackson, who was said to have been fatally wounded by mistake by one of his own men. He was probably the greatest military genius developed in the war; and his loss was by no means compensated by the Confederate triumph.

Lee now conceived the bold project of carrying the war into the north; and, with the object of taking advantage of the confusion and demoralization produced in the Union army by the disaster at Chancellorsville, he hurried with his forces to the west of and past Hooker, and thence by the way of Harper's Ferry in Maryland into Pennsylvania and past Chambersburg to the neighborhood of Gettysburg. On his march he gathered reinforcements until his army amounted to about one hundred thousand men—a force so large that he was supposed to threaten not only Washington but also Baltimore and Philadelphia. His advance consequently produced the greatest alarm throughout the north; and large bodies of loyal troops were hurried from all quarters to oppose him. Hooker would also probably have been glad for another brush with Lee; but, in consequence of a disagreement with Halleck, he deemed it proper to resign his command; and General George C. Meade was placed at the head of the army of the Potomac in his stead. Meade at once advanced against Lee, marching his army, which likewise amounted to about one hundred thousand men, on a line east of and nearly parallel with Lee's route and having a mountain chain between them. The two armies converged and came into collision in the immediate vicinity of Gettysburg on July 1; and there was, then and there, fought what was perhaps the most critical and important battle of the war and one of the greatest military conflicts of modern times. It lasted for three days or until the end of July 3, resulting in the discomfiture of the Confederates and the driving of them back defeated and disheartened into Virginia. Their loss was said to have been forty thousand men; that of the Union army twenty-four thousand.

The Confederates seem to have felt confident of winning the

victory, compelling the president and his cabinet to fly from Washington, occupying that place and seizing also Baltimore and Philadelphia. It appears to have been their fanciful notion that they would dictate terms to a fugitive Union government from the steps of Independence Hall. It had been their boast that grass should grow again in the streets of New York and that the whole north should be whipped into subjection. But however well the south fought, it found more than a master in the north. In its invasion of northern soil it had put forth all its strength; the Gettysburg campaign was its greatest effort; it risked almost everything upon that movement; and when it lost, irretrievably lost, there was little or nothing more of importance that it could do. It could never again collect such an army or recover from the exhaustion of such a tremendous disaster as it then sustained. Though Lee was a great general and managed to preserve a bold front upon his own Virginian ground during the remainder of the year and to give the Union arms much trouble and several defeats the next year, the battle of Gettysburg was, in a military point of view, the turning point of the civil war.

It was on the battle field of Gettysburg, at the dedication on November 19, 1863, of a part of it as a soldiers' cemetery, that Lincoln made the celebrated address, which more nearly perhaps than any other modern production recalls the famous oration of Pericles on the battle field of Marathon. In it he said, "Four-score and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war, testing whether that nation or any nation, so conceived and so dedicated, can long endure. We are met on a great battle field of that war. We have come to dedicate a portion of that field as a final resting-place for those who here gave their lives that the nation might live. It is altogether fitting and proper that we should do this. But in a larger sense we cannot dedicate—we cannot consecrate—we cannot hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it far above our power to add or detract. The world will little note, nor long remember, what we say here. But it can never forget what they did here. It is for us, the

living, rather, to be dedicated here to the unfinished work that they have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to the cause for which they here gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, and for the people, shall not perish from the earth.”

On July 4, the next day after the battle of Gettysburg, General Grant, after an able campaign characterized by his usual indomitable determination and perseverance, captured Vicksburg on the Mississippi. He had made several attempts on the north side to take this important place; but, having met with very great impediments on that side, he made up his mind to try it from the south side. To do so, he found it necessary to cross the river north of the city to the west bank; march down that bank to a point below the city; cross back to the east bank, and then march up the east bank; while the fleet of gun-boats, which had steamed up the river from New Orleans and successfully run the Vicksburg batteries, after protecting Grant's first crossing, again successfully ran the batteries on the downward trip. Upon approaching Grand Gulf at the mouth of the Big Black river, where the second crossing was to take place, Commodore Porter who was in command of the fleet, attacked the rebel batteries, but, finding that he could not silence them in time, ran a few miles further down the river to a place called Bruinsburg, where Grant, following rapidly, came up and crossed. Soon after crossing, he attacked and defeated the Confederates at Port Gibson, a few miles east of where he had crossed, and compelled the evacuation of Grand Gulf. A portion of his army, under Generals William T. Sherman and James B. McPherson captured Jackson, the capital of Mississippi, driving out the Confederate general Joseph E. Johnston. Meanwhile the Confederate general John C. Pemberton, who had been in command at Vicksburg, had marched out of that place with a large force for the purpose of uniting with and aiding Johnston; but he was met and defeated by Grant on May 16 at Champion Hills and the next day at the

crossing of the Big Black, whence he was driven back and shut up in Vicksburg. Grant with his main army then sat down before that place; and on July 4, as before stated, after a siege of forty-five days, Pemberton's forces marched out, stacked their arms and surrendered themselves, some twenty-seven thousand in number, prisoners of war. The Union forces immediately marched in and took possession of the city; and thus fell the great rebel stronghold of the west. About the same time Port Hudson in Louisiana, the last point on the Mississippi held by the rebels, surrendered to General Nathaniel P. Banks; and, as this was the last obstruction to free navigation, the great river thenceforward "ran unvexed to the sea." The result of these victories was not only the recovery from the Confederacy of an important portion of its territory, the defeat on every side of its forces and the destruction of its resources, but also its confinement within comparatively very narrow limits and the practicability of converging the Union forces in greater masses, or in other words tightening the folds of what General Scott had called the great northern military anaconda.

Both the north and the south, as the war progressed, had felt themselves obliged to pass conscription laws; but this unpopular measure became much more necessary and was sooner resorted to in the south than in the north. The Confederates in the spring of 1862 had passed an act enrolling in their army all adult white males between certain ages; and, as the war went on, new and more sweeping acts were passed, until every white male between the ages of seventeen and fifty-five, not physically incapacitated, was called into service. On the other hand in March, 1863, congress passed an act for the enrollment of all able-bodied male citizens between the ages of eighteen and forty-five and authorizing the president to make such drafts as might become necessary for the service, commencing with the men between twenty and thirty-five years of age. In May, 1863, soon after the defeat of Hooker at Chancellorsville and the advance of Lee towards Gettysburg, a call had been issued by Lincoln for three hundred thousand additional troops; and, as this number was not immediately made up by volunteers, a draft was ordered to supply the deficiency. Attempts to enforce this

draft met with resistance in many places, encouraged and fomented by political enemies of the administration, and in some places occasioned riots. The most violent of these occurred in New York in July, 1863. For several days that city was in the hands of a furious mob; a number of dreadful murders were committed, and several million dollars worth of property was destroyed. The rioters were at length overpowered; but it was found advisable to allow purchased substitutes and various exemptions; and a number of the states completed their quotas by offering bounties to volunteers. Thus the respective calls were filled, but with the very great difference that, while the south exhausted its supply of available men, the north continued to have a large reserve, if absolute necessity should arise to send them into the field.

In June, 1863, while Grant was besieging Vicksburg and just before the fall of that place, Rosecrans, who had already driven the Confederates under Bragg from Murfreesboro in the middle of Tennessee to Chattanooga on its southern boundary, again moved forward to drive them out of Chattanooga. On his approach to that point in the early part of September, Bragg, finding his communications threatened, evacuated it and crossed the Tennessee river, followed by the Union army. In a few days afterwards, Bragg, having been heavily reinforced from Virginia, faced around at Chickamauga; and a severe battle took place there, commencing on September 17 and lasting several days, the outcome of which was that the Union forces were defeated and compelled to fall back upon Chattanooga. The result of the first fighting was the rout of Rosecrans' right wing; but further disaster was prevented by the bravery and skillful management of the left wing under General George H. Thomas, by virtue of which almost the entire federal army was saved and its retreat secured. But in the meanwhile Bragg had succeeded in seizing possession of the heights around Chattanooga and obstructing the main avenues of further retreat, and then laid siege to Chattanooga itself.

Shortly before Bragg turned around at Chickamauga, a large part of Rosecrans' army had been detached, by order from the war-office, and sent off on distinct and separate service under

General Burnside into the eastern part of Tennessee. Learning this and how much Rosecrans' army had been thereby reduced below his own numbers after reinforcement, Bragg, as soon as he safely could, sent off a part of his forces under General James Longstreet to cope with Burnside at or near Knoxville where he then was. About the same time, on account of the favorable condition of federal affairs in other quarters, many changes took place in the Union armies. In October Rosecrans was superseded by Thomas; and Grant, who had been so successful on the Mississippi, was placed in general command of all the armies in the west. Soon afterwards he was joined by two corps under Hooker from the army of the Potomac; and Sherman came up with the greater part of the so-called army of the Tennessee from Vicksburg and vicinity, where it was no longer needed. In a couple of weeks thereafter, an assault was made upon Bragg's fortified positions on Lookout Mountain and Missionary Ridge overlooking Chattanooga; and there was no cessation in the attack until both places were taken and the rebels driven out of Tennessee. Lookout Mountain, which rises high above the valley of the river at Chattanooga and commands an extensive view in several directions, was successfully stormed on November 24 by Hooker, who on this occasion showed how well he deserved the name of "Fighting Joe." In the midst of a thick fog and mist that covered the summit, he pushed up the heights, fighting step by step all the way but steadily advancing, until he gained and cleared the top; and it was from this circumstance that his gallant action was afterwards usually called the "battle above the clouds." On the next day after Lookout Mountain was thus cleared, Missionary Ridge on the same or south side of the river was attacked by the main army, having Hooker on the right wing, Thomas in the center and Sherman on the left. Before such a combination it was impossible for Bragg to stand. In a short time he was driven off to Dalton in Georgia, where he was shortly afterwards superseded in his command by Joseph E. Johnston; and about the same time Longstreet found it advisable to abandon the siege of Knoxville, where he had Burnside surrounded; and, retreating into Virginia, he joined Lee.

Of the ports on the Atlantic coast still remaining in the pos-

session of the Confederacy, the strongest and most important was Charleston, South Carolina. Several attempts had been made to reduce it without success. At length, however, on September 7, 1863, Fort Wagner on Morris Island, which commanded the main ship-channel, was taken; and soon afterwards Fort Sumter, where the first gun of the war was fired, was entirely demolished. Upon the capture of these places, United States vessels entered the harbor and effectually closed it up. Meanwhile the Confederates had managed to fit out several formidable cruisers in England, a number of whose office-holders, with Palmerston at the head, and some of its merchants and manufacturers were in secret, if not openly, inimical to the prosperity of the United States and willing to do almost anything calculated to cripple and embarrass it. Among the most destructive of the cruisers thus furnished by the English ill-wishers of the United States, and whose actions seem to have been winked at by the British government, were the *Florida*, the *Georgia* and the *Alabama*. The *Florida*, which had been built at Liverpool, captured twenty-one merchant vessels belonging to citizens of the northern states in 1863 and the first half of 1864. An end was put to its piratical depredations upon the unarmed merchant marine by its seizure by the United States in the harbor of Bahia, Brazil, in October, 1864. The *Georgia*, which had been built at Glasgow in Scotland and put to sea in April, 1863, was captured, after a very short cruise in which little damage was done, by the United States frigate *Niagara*. The *Alabama*, the most successful and destructive of the pirate vessels fitted out by the English, was built in Liverpool for its Confederate captain Raphael Semmes. While it was building in the early part of 1863, the British government was informed of its purpose and urged to prevent its going to sea by the United States minister; but his representations and remonstrances were disregarded and the vessel was allowed to sail in July. Its warfare, like that of the other Confederate cruisers, was confined to attacking unarmed vessels of the northern merchant marine. After destroying sixty of them, it was cornered off Cherbourg in the British Channel by the United States steamer *Kearsarge* under the command of Captain John A. Winslow and, after a short action, sunk. Semmes, who had

posed and was generally recognized by the south as a chivalrous partisan, though it would be difficult to justify his title to such a character from the facts, managed to escape from his ship and seek refuge under British protection in a little English pleasure yacht, which was hovering suspiciously near at the time of the action. As Great Britain subsequently had to pay for all the damage caused by these cruisers, the north perhaps did not lose much; but its feelings for the time against the so-called "perfidious Briton" ran very high.

A number of small operations, rather indicating bad management in the war department or responsible head of the army at Washington than weakness in the soldiers employed, took place in the early part of 1864. General Truman Seymour conducted an expedition into Florida but was defeated with considerable loss. General Banks was sent up Red river to attack Shreveport in Louisiana and seize a large quantity of cotton; but he was overpowered and his expedition ended in failure and disaster. The only expeditions of the time that were successful were a raid by Sherman into and across Mississippi for the purpose of breaking up railroads and bridges and destroying supplies, and a campaign by Rosecrans, who had been appointed to the command in Missouri, against an invasion by General Sterling A. Price and the driving of him and his men out of that state. On the other hand a large Confederate force under General Nathan B. Forrest made a raid into Tennessee and Kentucky and on April 12 captured Fort Pillow on the Mississippi river about forty miles north of Memphis, where he was said to have massacred a number of white as well as all the negro troops found there.

At or about the same time that these comparatively inconsequential affairs were being transacted at a distance, a very important matter was taking place at the national capital. Grant's great success in the west had attracted the attention of the public. Without assumption or pretense of any kind, and not even complaining when unjustly treated, he had gone on with determination, earnestness and ability, fulfilling the duties of his station whatever it might be and producing very great and at length brilliant effects. Though some others would have been glad to keep him down, his merits, particularly as the administration and

the country felt the need of and were seeking with all their might for a great general, could no longer be hid. On December 7, 1863, the first day of the congress that met that year, Elihu B. Washburn of Illinois introduced into the house a resolution empowering the president to appoint a lieutenant-general of all the United States forces. It was avowedly intended to place Grant at the head of all the armies and in fact repose in him the entire further conduct of the war. He had already been appointed a major-general in the regular army; but the purpose now was to create a new and theretofore unprecedented grade, which would outrank in military affairs everybody else except the president, who was and would have to remain the constitutional commander-in-chief. There was some opposition to the bill; even such men as Thaddeus Stevens and James A. Garfield voted against it; but it nevertheless prevailed by a vote of ninety-six ayes to forty-one noes. This was owing in great measure to a remarkable speech of Washburn describing Grant as uniformly successful in every fight from Belmont to Lookout Mountain and the very man the public wanted and upon whom the country could depend to fight out the rebellion to the end. He then spoke of the famous campaign against Vicksburg and called particular attention to the fact that, for the purpose of securing celerity of movement on that occasion, Grant had not taken along any of the trappings and paraphernalia so common to military men. "General Grant," he continued, "took with him neither a horse, nor an orderly, nor a servant, nor a camp chest, nor an overcoat, nor a blanket, nor even a clean shirt. His entire baggage for six days—I was with him at the time—was a tooth-brush. He fared like the commonest soldier in his command, partaking of his rations and sleeping upon the ground with no covering except the canopy of heaven."

The bill, having passed the senate as well as the house, was on February 29, 1864, approved by Lincoln, who immediately thereafter nominated Grant. The lieutenant-general was thereupon ordered to Washington, where he arrived on March 8. Lincoln had never seen Grant nor Grant Lincoln; and consequently the two greatest men in their respective spheres of their day then met for the first time. From that moment, Grant was

the military head-in-fact of the United States armies. He at once superseded Halleck and took personal supervision and direction of the war in Virginia. While retaining Meade in general command under himself, he reorganized the army of the Potomac into three corps under Generals Winfield S. Hancock, George B. Warren and John Sedgwick respectively; and soon after he added a fourth corps under General Burnside. He also called General Philip H. Sheridan from the west and appointed him to the general command of the cavalry in the eastern army, while on the other hand he left Sherman in general command of all the armies of the west. The simple fact of the appointment of these men, especially in the light of their extraordinary subsequent efficiency, indicated that Grant was not only great himself but able to discover military greatness in other men. In this respect he was evidently superior to Lincoln; though it must be admitted that no man was ever more willing to recognize greatness than Lincoln, and no one more willing to adhere to and support Grant, through thick and thin, when he had once come to know the man and appreciate his greatness.

On the Confederate side Lee had also divided his Virginia army into three corps under Generals Ambrose P. Hill, Richard S. Ewell and James Longstreet respectively, while Johnston was left at Dalton in Georgia to oppose Sherman in the west. Early in May, 1864, under Grant's orders, there was a simultaneous advance upon the Confederates both in Virginia and Georgia. In Virginia the army of the Potomac, which consisted of about one hundred and twenty-five thousand men, nearly twice as large as Lee's army, crossed the Rapidan and entered what was known as the "Wilderness"—a forbidding and difficult road next the river on the direct route from Fredericksburg southward. Grant's idea was to push rapidly through the wilderness and get between Lee's army and Richmond. But Lee had chosen and fortified so many positions all along the route and defended them with so much ability and constancy that Grant had to fight his way step by step almost the entire distance. From May 5 to May 8 there was, so to speak, a continuous uninterrupted battle; and on each day great bravery was displayed and

great losses suffered. Lee, however, was by slow degrees forced back and Grant emerged from the wilderness near Spottsylvania Court House, where ten days more of severe fighting took place. It was from that neighborhood that Grant, on May 11, 1864, sent word to Washington that he had just ended the sixth day of very heavy fighting, with favorable result but great loss to his own side though greater to the enemy, and ending with the afterwards famous expression, "I propose to fight it out on this line, if it takes all summer."

In forcing his way still further south Grant, having found that Richmond was not to be taken by a dash for the reason that Lee was too heavily intrenched on the direct road, was compelled to make a detour so as to get around to a point where it could be attacked from the south. He accordingly moved off towards the eastward; and in getting around in that direction he was compelled to fight two very severe battles against Lee's intrenched positions, one at what was known as North Anna and the other at Cold Harbor, in each of which the Union losses were very great. He thus reached the Chickahominy river, some eight or ten miles east of Richmond, and from there proceeded southward to the James river, which he crossed near Bermuda Hundreds. His intention seems to have been to take Petersburg on the Appomattox river and make it a base of operations against Richmond; and he ordered it to be seized; but, for some reason not easily explained, his directions though perfectly practicable were not obeyed in time; and, Lee having in the meanwhile thrown himself into the place, it could not be taken. A desperate assault was made on June 18; but it was soon found, at a cost of about ten thousand men, that Petersburg, as then held, could not be carried by assault; and all that remained was to lay siege to it. As a matter of fact it was substantially within the defenses of Richmond, from which it was only twenty miles distant; and the long siege, now laid to it by Grant, proved in the end to be the siege also of Richmond.

Whatever may have been the cost of the march through the wilderness and the investment of Petersburg—and it was estimated at nearly ninety thousand men in killed, wounded and missing—there can be no doubt that a great purpose had been

accomplished, though it may not have appeared at once. Notwithstanding the severe losses suffered by Grant, the Confederates had, in proportion to their numbers and strength, sustained much greater ones. He could stand them; they could not. He may have expected, and doubtless did expect, a much more fortunate result to his advance southward; but he had to make that advance at any cost. He had to prevent Lee from attempting to march north again by keeping him busy in Virginia; and he did it effectually. Though he may not have been able as yet to enter Richmond or even Petersburg, he had placed and maintained himself in the next most fatal point for the cause of the Confederacy. Though he may not have closed the war, as he had hoped to do, he prepared the way to close it the next spring.

During all this time California was profoundly interested in all the military operations that took place at the seat of war and in everything that was done in the work of preserving the Union. It never for a moment wavered or hesitated in word or act in behalf of the great cause. Though very poorly and inadequately represented, in so far at least as the Union sentiment was concerned, by the United States senators Milton S. Latham, who sat from March, 1860, to March, 1863, and James A. McDougall, who sat from March, 1861, to March, 1866, the case was much better in the lower house, where the congressmen for the term from March, 1861, to March, 1863, were Timothy G. Phelps, Aaron A. Sargent and Frederick F. Low and their successors were Thomas B. Shannon, William Higby and Cornelius Cole—all of them uncompromising, determined and outspoken Union men. As for the state legislature, which was elected in 1863 and was to be the first of the biennial legislatures under the constitutional amendments of 1862, it was even more thoroughly and completely Union than the one of the year before—the loyal majority being counted as seven to one in the senate and nine to one in the assembly.

The new legislature met at Sacramento on December 7, 1863, and on the same day Governor Stanford presented his last message, reviewing the condition and setting forth the prospects of the state at that date. He showed that the state debt on December 1 was a little over four million eight hundred and thirty-nine

thousand dollars and that it had been decreased nearly seven hundred and thirty thousand dollars since December 1, 1862. He also called attention to the circumstances that the assessed value of the real and personal property in the state at that time was in round numbers one hundred and seventy-four millions, an increase of eleven millions over that of the previous year. The decrease in the indebtedness, he said, was due in part to the fact that no outside expenditures had been contracted, and that it had been the steady aim of the administration to keep the expenses within the limits contemplated by the annual appropriations. But he maintained that, however much the administration might be imbued with the spirit of economy, it rested chiefly with the legislature whether or not such a disposition could be successfully cultivated. "In public affairs, as in private transactions," he continued, "the policy that grasps the present and wisely anticipates the future is the one that should prevail; and the same combination of sagacity and prudence with judicious expenditure, that conducts individual enterprises to a successful issue, should be the governing rule that controls legislative action."¹

As to charitable institutions Stanford merely stated, without making any recommendation, that the previous legislature had donated one hundred and eighty-six thousand dollars to carry on the insane asylum, state prison, reform school and deaf and dumb asylum, and thirty thousand dollars to institutions not connected with the state. He recommended a thorough revision and codification of the statutes and stated as a reason that citizens "desirous of investigating the laws stand aghast as they survey the fourteen ponderous tomes that constitute the statutes of this youthful state, and young aspirants to professional fame tremble as they cross the threshold that leads into this intricate abyss." He favored the continuance of the geological survey; hoped that the question of taxing the mines, which had excited the previous legislature, would never be revived, and maintained that the mining interest "should always be fostered as the foundation of our prosperity." Passing next to the public lands granted to the state, he showed that, in addition to the tide

¹ Senate Journal, 1863-4, 22, 23.

lands, they amounted to a little over eight million nine hundred and thirty-two thousand acres, of which nearly one million seven hundred and twenty-two thousand had been sold, leaving over seven million acres at that time to be disposed of. In reference to the public schools, he considered it a privilege as well as a duty for the people to tax themselves liberally "for the support of those institutions, which served as the base and the chief corner-stone of republican liberty. Had the system of common school education that prevails in our northern states," he continued, "found an early entrance and been nourished into life in those states that are now at war with the Union, the civilization of the nineteenth century would never have been shocked by the rebellion that now disgraces its annals. At the north, the principle of education is the governing law that binds into a solid phalanx that proud array of free communities. At the south, ignorance rears on every side its hideous front, until the masses are steeped in the degradation that has for years been preparing by their unprincipled leaders. The north is united in battling for a principle, which education has taught them to be the very life of their institutions. The south will become assimilated to the intelligence and loyalty of the Union as soon as the result of our victories shall have dispersed the cloud of ignorance that has, with them, overshadowed the causes and consequences of the unnatural contest."¹

Stanford next called attention to the result of the offer of premiums by the legislature of 1862 for various agricultural and other products. He said that extensive tracts of pine lands had been taken up and a large amount of capital invested for the manufacture of turpentine, resin and tar; that tobacco was being successfully cultivated and would become an important staple; that hops of superior quality had been raised, and that promising experiments had been made in the production of sugar, hemp and coffee. "From a state entirely at the mercy of others for the comforts and necessities of life," he went on, "we have risen to an independent position, and in some productions take precedence of all other states in their annual aggregate yield." And further along, referring to another fifteen years of state growth,

¹ Senate Journal, 1863-4, 24-29.

he added, "As we now lead all other states in the production of wine and barley, we may then rival Louisiana in the production of sugar, Virginia in tobacco and Kentucky in hemp. And while the trade and staples of North Carolina are languishing under the blighting influence of secession, the mountaineers of California may snatch from her grasp the distinction of being the chief tar state."¹

After a few remarks upon the suppression of Indian troubles, the efficiency of the California volunteers, the beneficence of the sanitary fund, the increased organization and equipment of the state militia, the erection of additional fortifications and water batteries at San Francisco, the construction of an iron-clad for the protection of that harbor, and in decided favor of adopting the legal tender note or greenback currency, Stanford finished his message with an exposition of his views upon federal relations and the civil war. He spoke of the spirit of gloom that had seemed to lower over a portion of the north, the opposition in some of the states to the policy of the administration and the general belief that some of the European powers would take advantage of temporary disasters to urge their threats of southern recognition. "But," he proceeded, "the victories of July marked a revolution in our affairs. The dissensions that had crept into the loyal states, the doubts that prevailed as to our ultimate success, and the growing fear of foreign intervention were overcome in the glories of Gettysburg, Vicksburg and Port Hudson. Other triumphs have since followed the national arms and the people have spoken in unmistakable tones through the ballot-boxes of the loyal states their purpose to support the administration; and they have evinced in language not to be misunderstood their detestation of the black conspiracy that has so long threatened the beloved institutions of their country. With this sentiment, strengthened as it will be by every victory that rewards the valor of our troops, the result of the struggle in which we are engaged cannot be doubtful. The patriotism, spirit and loyalty of the people will soon succeed in restoring where it rightfully belongs the control of every foot of territory within the national boundaries."

¹ Senate Journal, 1863-4, 30.

In view of this result, he thought it well to consider the condition in which the territory to be recovered would be left and the new and important duties that would be imposed upon the national government in the work of reconstruction. The future peace and prosperity of the republic and of each state were involved in the proper adjustment of the problems presented. It was obvious that there should be a thorough and effectual eradication of every system not in harmony with the great principles of liberty, which formed the foundation of Republican institutions. In that regard the rebellion was to be regarded not as an unmixed evil, for it gave the loyal states the opportunity and the right, in the might of their success, to act for the greatest good of the whole country. Under all the circumstances, he was inclined to the opinion that in the recognition of the rebellious territory it might be wise to disregard old state lines and even obliterate their very boundaries and names "so that in the future their loyal inhabitants, taking a just and proper pride in their local institutions and states, shall not unnecessarily suffer the mortification and injury of association with the history of so vile a rebellion, that was not only against the great principles of liberty and freedom but sought, with a worse than parricidal hand and with treachery the most unnatural, the eternal and never-to-be-forgotten infamy of dismemberment and destruction of their common country."¹

¹ Senate Journal, 1863-4, 33-40.

BOOK XII.

LATER STATE ADMINISTRATIONS.

CHAPTER I.

LOW.

FREDERICK F. LOW, the new governor of California, was a native of Frankfort, Maine, born on January 30, 1828. All his school education was received there. Before attaining majority he sailed for California and arrived at San Francisco on June 14, 1849. After an experience of a few months in the mines, he engaged in business at San Francisco, where he continued until 1855, when he went to Marysville and opened a banking house. In the Republican state convention held at Sacramento on June 18, 1861, he was defeated as a candidate for the office of state controller; but on August 20 of the same year he received the Republican nomination for the third place as a congressman, to which California became entitled under the census of 1860; and in the autumn of the same year he was elected. He duly presented himself to the house of representatives in Washington, but was not admitted until June 3, 1862; and from that time he sat until the end of the summer session of 1863. Upon his return, he became a candidate for governor and managed, under Conness' manipulation, as already stated, to obtain the nomination and gain the election.¹

On December 10, 1863, in the presence of the legislature convened in joint convention, the new governor was sworn into office and delivered his inaugural address. He called attention to the changes made by the recent amendments to the constitu-

¹ Davis' Political Conventions, 176, 179, 182, 195, 201, 599.

tion and especially to the fact that the wants of two years, instead of one as before, would have to be anticipated and provided for at each session of the legislature. He said, "This new order of things—calculated to lessen the expenses of the government and to give to our legislation more permanence than has been hitherto enjoyed—increases the responsibility of both the executive and the legislature and makes an additional call upon their zeal and watchfulness in the conduct of public affairs." He next turned to the question of finances and said that, as it would be apparent to any one examining the subject that the state was "paying an interest, directly and indirectly, of two per cent per month as a minimum on a large portion of the current expenditures," there could be little hope, until a remedy could be found for such a state of affairs, to attempt inaugurating the reforms in various departments that were imperatively necessary; and he proposed at an early day to make such recommendations as might seem to him conducive to the ends indicated. He promised, in filling the offices within his gift, to exclude "drones, whose small talents and less energies are usually exhausted in efforts to obtain places which they are not competent to fill;" to use the veto power "with caution and only in cases where to refrain would be detrimental to the best interests of the state," and never to exercise the pardoning power unless convinced that injustice had been done—the presumption in all cases being that questions of guilt or innocence are far better capable of determination on regular judicial trials than on ex-parte statements subsequently made.¹

After mentioning the penal, reformatory and benevolent institutions, the burdens of which must always be borne by well-regulated communities, he proceeded to speak of private charitable enterprises, which had been receiving large aid from the state—the last year's appropriations amounting to thirty thousand dollars. "Such munificent gifts in aid of suffering and helpless humanity," he continued, "would be a source of pride to every good citizen, if the state had anything to give; but appropriations so large of mere promises to pay, while state warrants to the amount of hundreds of thousands of dollars are selling in the

¹ Senate Journal, 1863-4, 69-71.

market at rates far from flattering to the public credit, seem to me to be an exhibition of generosity at the expense of justice towards those who have become creditors of the state. I am firmly of the opinion that no additional debt should be created for these purposes and that the various local charities should for the present at least rely upon the aid of private citizens and, where circumstances justify it, of the county authorities." He deemed the state prison as but poorly answering the purpose for which it was intended; pronounced the system pursued in its management as far from perfect, and said he should endeavor to do something towards making the prisoners support themselves; he trusted that the insane asylum, after recent improvements, would be found adequate, so as to do away with the frequently agitated question of a branch asylum in some other portion of the state; he hoped that proper attention would be paid to the discipline and reformation of juvenile offenders, and he doubted whether so large an appropriation as seventy-five thousand dollars for the deaf, dumb and blind was, in view of the embarrassed condition of the state finances, either necessary or judicious.¹

Special legislation, he thought, had been a crying evil in the state, consuming a large portion of the time of each session of the legislature and dealing with subjects in respect to which counties and courts were the best judges; and he announced that he should not hesitate to withhold his approval from "any bill granting privileges which might have been granted under the general laws of the state by the supervisors of the county therein concerned, had they deemed it advisable, or any bill intended to aid parties in courts to favors denied them there." He believed that "the proceeds of the bounties so liberally granted to the state by the general government for school purposes should be inviolably preserved to their proper uses and the debt due to the school fund—which under no pretense should ever have been contracted—should be preferred before all other claims." He favored the normal school, the university and the registry law. He held that "no tax should ever be laid upon commerce for the aggrandizement of individuals or corporations or for the support of useless public officers." He deprecated the

¹Senate Journal, 1863-4, 71, 72.

attempt made some years previous by one of the judges of the supreme court "to assert for California the ownership of the mineral lands of the United States within her boundaries" as repugnant to the loyal sentiment of the people and manifestly in conflict with the rightful sovereignty of the nation, and expressed a hope and confidence that all citizens would and should be encouraged to enter freely upon the public mineral lands for mining purposes.¹ In conclusion, after a few words favoring a continuance of the geological survey, he congratulated the state upon its emphatic declaration for the fourth time, through the ballot-box, of adherence to the Union uncompromised and uncompromising, and against any other peace than such as would follow upon unconditional surrender of the rebels to the nation's rightful authority.²

One of the first acts of Low's administration was his veto on December 18 of a bill to transfer the moneys then in the hospital fund of the state of California into the legislative fund; and he continued to shower vetoes for the remainder of his term. On December 23, he vetoed a bill in reference to the compensation of the supervisors of El Dorado county on the ground that it would establish a dangerous practice and remove proper checks as to the drawing of warrants. He likewise vetoed, on January 30, a bill to validate the illegal acts of the Calaveras Mining Company on the ground that such action was beyond the power of the legislature; on February 2, a bill in reference to commitments to the insane asylum; on March 5, a bill to secure rights which had been lost by the inadvertant repeal of an old forcible entry and unlawful detainer act; on March 10, a bill for a bridge over the Stanislaus river; on March 15, a bill to authorize the sale of certain interests of minors in a house and lots in Sacramento; on March 21, a bill to extend the provisions of certain general statutes over a single township in Amador county and a bill to grant certain exclusive rights and privileges to the Yreka Creek Drainage Company; on March 22, a bill requiring the supervisors of Sacramento county to levy a tax for the benefit of

¹See Opinion of Justice Heydenfeldt in *Hicks vs. Bell*, 3 Cal. 219; afterwards overruled in the combined cases of *Moore vs. Smaw* and *Fremont vs. Flower*, 17 Cal. 199.

²Senate Journal, 1863-4, 72-75.

the State Agricultural Society; on March 23, a bill for the construction of a turnpike road in Santa Clara and Santa Cruz counties on account of a fatal mistake in it; on March 29, a bill to authorize the commissioners of the funded debt of San Francisco to compromise and settle claims and convey real estate on the ground that it would unsettle titles and encourage litigation; on April 4, a bill to aid in the construction of the Californian portion of the Pacific railroad from San Francisco to the eastern boundary of the state, a bill to amend the civil practice act on account of a fatal error in it, and a bill to authorize the Oakland and San Antonio Steam Navigation Company to improve the navigation of San Antonio creek in Alameda county. All these vetoes were sustained.¹

But there were a number of other vetoes by Low that were not sustained, and particularly when it became apparent that he rather enjoyed the exercise of the veto power. On February 15 he vetoed a bill to construct a turnpike in Amador county, a bill to construct a turnpike in Marin county and a bill to authorize the administrator of Maria Ygnacia Amador de Alvarado, deceased, to sell real estate. These were all passed over the veto almost unanimously. On March 28 he vetoed a bill extending the franchise of a toll road in Tulare county from twenty to twenty-five years, which was passed over the veto unanimously in the senate and by a vote of fifty-two against eight in the assembly. Several other vetoes were sustained by a bare scratch in the senate. One was of a bill authorizing the administrator of Josiah B. Royal, deceased, to sell the property of the estate; another of a bill authorizing the executors of Elias S. Cooper, deceased, to sell real estate; another of a bill authorizing Lucian B. Healy to sell real estate, and another of a bill authorizing the guardian of certain minors to sell their estate.²

Every sentiment or proposition in favor of the Union was of course received with welcome by the legislature of 1863-4. On December 22, 1863, the governor transmitted a letter from General Joseph Hooker, written on September 20, 1863, in reference

¹Senate Journal, 1863-4, 110, 131, 232, 410, 460, 494, 518, 529, 531, 587, 688, 690; Assembly Journal, 1863-4, 293, 492.

²Assembly Journal, 1863-4, 356, 381, 426, 483, 488, 601, 608, 625; Senate Journal, 1863-4, 380, 566.

to the resolution of the previous legislature in recognition of his splendid services in the national cause and the fame reflected by them on the name of California.¹ Hooker returned his thanks; said that his name was borne on the army register as a representative of his adopted state, and added that, next to honorable and complete success over the enemies of the Union, he could esteem nothing more highly than California's good opinion of the manner in which he had performed his duties. At the suggestion of the governor, the letter was spread upon the journals of both houses.² On January 20, 1864, a series of resolutions was adopted expressing the most uncompromising loyalty of the people of the state to the Union, indorsing all and each of the measures of the national administration for the suppression of the rebellion, pledging the faith of the state to stand by and support President Lincoln in his emancipation proclamation and his determination not to retract it, giving in its adherence to his plan of reconstruction of the rebellious states and, after some further expressions of unswerving patriotism, recommending him to re-election as "the instrument selected by Providence to lead the country in safety through all its perils and restore it again to a peace in which no element of discord shall be found."³ On January 29, a resolution was offered in the senate asking United States Senator James A. McDougall to resign his seat for the reason that he did not represent the loyalty of the people of California. There were many amendments offered in both houses, some of them reflecting unfavorably though perhaps too truthfully upon his intemperance; but the houses finally on February 9 settled upon a distinct series of resolutions, charging that his associations and political and personal conduct were a willful misrepresentation of the wishes, opinions and habits of the people of California, and calling upon all loyal men in and out of office to exonerate the state from the imputations which his conduct was so well calculated to invite.⁴

There were a number of persons in the state who, notwith-

¹ Stats. 1863, 795.

² Senate Journal, 1863-4, 120, 121; Assembly Journal, 1863-4, 156.

³ Stats. 1863-4, 546.

⁴ Senate Journal, 1863-4, 209, 228, 288; Assembly Journal, 1863-4, 203, 272, 329.

standing the general satisfaction given by the specific contract law or gold coin act, still thought it unpatriotic and desired its repeal. Several propositions of this kind were presented, but immediately from many different parts of the state came remonstrances against such repeal. On February 6, 1864, Salmon P. Chase, the secretary of the treasury at Washington, was asked by telegraph for his opinion on the subject; and he replied that he thought the gold law against national policy and that he would be much gratified to see California declare "in favor of one currency for the whole people" by its repeal. But the people in general were very decidedly of a different opinion; and the law remained and remains on the statute-book. On March 4, 1864, upon the announcement of the death on that day of Thomas Starr King, the orator and patriot, the houses resolved that he had been a tower of strength to the cause of the country and that from his ability, learning and eloquence the people of the state had derived the most enduring benefit. They therefore ordered the flag on the capitol to be displayed at half mast and adjourned from March 5 to March 8 in honor of his memory.¹

At the same session of the legislature, apparently in response to the recommendations of Governor Stanford's message, various different bills were offered for a digest of the statutes. It was a work that was much needed for the reason that the statutory law was in the utmost confusion and so scattered that it was extremely difficult for any one, except an expert, to know anything about it. Most of the bills were introduced into the assembly; but it was found towards the end of the session that the subject could not be satisfactorily settled; and all the propositions were indefinitely postponed.² Before the beginning of the next session, private enterprise, entirely unaided by the state, supplied the want and made it comparatively easy a few years afterwards to formulate the series of codifications known as the California codes.

As a general rule the conduct of this legislature was earnest and dignified. There were no disgraceful exposures, scenes or

¹ Senate Journal, 1863-4, 287; Assembly Journal, 1863-4, 461; Stats. 1863-4, 550.

² Assembly Journal, 1863-4, 580.

charges, as there had been in previous legislatures; and, if there was any corruption, it was so secret as to be practically unknown. But there was nevertheless a touch of comedy, if not farce. On March 15, on the passage in the senate of a bill for the relief of Joseph A. Moultrie, Horace Hawes declined to vote. R. C. Gaskill, notwithstanding the ballot was twenty-one in favor of the bill to eight against it, moved that Hawes should be required to vote. After much bickering, he moved a resolution which was adopted that if Hawes still persistently declined to vote, the presiding officer should be required to reprimand him for contumacious refusal to comply with the rules of the senate. On the adoption of this resolution, George Pearce declined to vote. After the reprimand of Hawes, which was somewhat perfunctory, L. M. Foulke moved that Pearce should be called before the bar of the senate and give his excuse. Thereupon Hawes, in speaking on the proposition, made use of pointed language to the effect that a statement that he had "absolutely refused to vote when requested or required so to do by the senate" was a falsehood. To this James E. Hale took exception; and Hawes made an explanation which was accepted by the senate as satisfactory. Hawes then moved that Foulke's resolution against Pearce should be amended by including the name of every senator who might be found by referring to the journal to have declined to vote. This was declared out of order; the resolution was adopted; and Pearce made an explanation and was excused. The next day Gaskill and Hale, having failed to answer to their names at roll-call as required by the rules of the senate, Hawes moved that they should be reprimanded by the presiding officer for their contumacious conduct; but by that time the senate was apparently tired and put an end to the subject by tabling it.¹

On April 4, 1864, the legislature adjourned; and there was not to be another session until December, 1865. By that time many changes, and particularly in reference to the war and the condition of the Union, had occurred. Grant, as has been seen, had plunged with the army of the Potomac into the wilderness between Fredericksburg and Richmond and in June, having got around to the south of Petersburg, invested that place. One of

¹ Senate Journal, 1863-4, 468-472.

his first moves, after establishing his position there, was to reach out southwestward with the object of seizing the railroads and thereby intercepting Lee's communications with the southern country and cutting off his supplies. It was perfectly well understood by Lee that this would be terribly disastrous, if not fatal, to him; and he was obliged to send out his best troops to resist Grant's steady and persistent efforts to accomplish a purpose of such great importance. The struggle for the railroads running southward became therefore as it were the chief controversy and so remained, while the main armies faced each other about Petersburg, until the next spring. In July, however, very soon after Grant took up his position on the south side of Petersburg, Lee attempted to make a diversion by sending General Jubal A. Early into the Shenandoah valley with a force strong enough to menace Washington. He hoped in this manner to induce Grant to detach so many troops from before Petersburg as to materially weaken him. But Grant was not to be changed from his purpose by such strategy: besides, he had placed Sheridan in command of all the Union cavalry in that part of the country, and had good reason to believe that he could depend upon Sheridan to do what occasion might require.

Early, according to directions, proceeded into the Shenandoah valley and marched thence with celerity by the way of Harper's Ferry into Pennsylvania as far as Chambersburg, which he burned—at the same time seizing and driving or carrying off large numbers of cattle and quantities of supplies. He even advanced to within six or seven miles of Washington; but, as he saw it would not be prudent to approach too near or to remain where he was, he suddenly turned around and returned the same way he had come into the Shenandoah valley. At Winchester he was met by Sheridan; and a battle took place at that point on September 19, 1864, in which the Confederates were badly defeated. Early, collecting what were left of his scattered forces, fell back to Fisher's Hill, eight miles south of Winchester, where he attempted to make a new stand. But Sheridan was not a man to hesitate or delay as long as he could strike; and, pushing after Early as rapidly as possible, he a few days subsequently struck him again at that place and defeated him even worse than before.

Early and his demoralized forces, having lost nearly everything, were obliged to take to the mountains, where Sheridan with his cavalry could not well follow. Sheridan thereupon directed his attention to scouring the Shenandoah valley and destroying all property, of which the rebels might make use, that he could lay hands on. He then, supposing that Early had had enough of his raid, left his forces in charge of Generals George Crook and Horatio G. Wright and made a flying visit to Washington.

Sheridan was mistaken in Early. That persistent officer, gathering up his broken forces and being in the meanwhile largely reinforced, on October 18 made a night attack upon the Union army at Cedar Creek near Fisher's Hill, defeated it and threw it into confusion. On that same night Sheridan, who had returned from Washington, slept at Winchester. In the morning, he started up the valley for the purpose of resuming charge of his army; but the further he rode the more he was convinced that some great disaster had occurred. Becoming alarmed he put spurs to his horse and, after a long and severe run of some thirty miles, reached the front about ten o'clock, where he found Wright re-forming his shattered lines. Such was the equestrian feat that afterwards, being embellished by a poet, became famous as "Sheridan's Ride." According to the poem, Sheridan induced his defeated army to turn around at once and rush upon and rout the exultant enemy. The fact was that he rode up on his smoking horse, swinging his cap and finding no fault, but on the contrary encouraging his men and calling in the stragglers—at the same time shouting to them, "Turn the other way, boys; we are going back to our camp. We are going to lick them out of their boots!" The stragglers did resume their places in the ranks; and then Sheridan, exercising great care and circumspection to keep up their spirits with profuse and cheering assurances of "getting even on Old Jubal," led them back. And accordingly, that same afternoon about one o'clock, he again fell upon Early and gave him another severe beating—this time driving him through the streets of Strasburg in greater disorder than he had previously driven him at Winchester and Fisher's Hill. Early's army was in fact totally destroyed and never fought again. The Union victory was indeed an extraordinary one, triumphantly

gained in the afternoon by an army that had been thoroughly beaten in the forenoon of the same day. It was a wonderful exhibition of what a single man may sometimes accomplish and forcibly reminds one of a remark of Napoleon, "The general is the head, the all-in-all of the army. It was not the Roman army that conquered Gaul, but Cæsar. It was not the Carthaginian army that made the republican army tremble at the very gates of Rome, but Hannibal. It was not the Macedonian army that penetrated to the Indus, but Alexander."

At the same time that Grant was thus exercising Lee at Petersburg and Sheridan was driving Early in the Shenandoah valley, Sherman was pressing Johnston in Georgia. He left Chattanooga on May 6 with about one hundred thousand men, consisting of the so-called armies of the Cumberland, the Tennessee and the Ohio,—the first under the subordinate command of General Thomas, the second under that of General McPherson, and the third under General John M. Schofield. His infantry amounted to about ninety thousand; his cavalry to about six thousand, and his artillery to about four thousand with two hundred and fifty-four field-pieces. The main object of his expedition was the capture of Atlanta, the capital of Georgia, about one hundred miles southeast of Chattanooga, where were situated the chief manufactories of Confederate military supplies. On the other hand the Confederate forces under Johnston, whose duty it became to resist Sherman's advance, consisted of about sixty thousand men, divided into three corps under the subordinate lead of Generals William J. Hardee, John B. Hood and Leonidas Polk respectively. While Sherman's men were in prime condition, fully equipped, many of Johnston's were not so, and some of his raw levies not in fighting trim. All he could do therefore was to stubbornly dispute the Union progress, making the best use possible of the many defensive positions which the rough country south of Chattanooga afforded, and not to risk a regular battle; and it was upon this plan that he fought.

Sherman advanced without much delay at any point. His numbers and his skill enabled him to drive the Confederates from every stand made by them. Small conflicts took place at Resaca on May 15, Dallas May 25, Lost Mountain June 14 and Kenesaw

Mountain June 27, at which Polk was killed. Johnston kept moving backward until July 10, when he made a new stand behind the defenses of Atlanta, while Sherman followed, and the two armies faced each other with the Chattahoochee river between them. While in this position, on July 17, Johnston, who notwithstanding his able retreat did not appear to give satisfaction to the Confederate government, was superseded, and Hood, who was usually known as "the fighter," was put in his place. This was probably fortunate for the Union arms, because Hood, apparently to keep up his reputation or at least to satisfy the anti-Fabian policy of the Confederate government, at once assumed the offensive and in a short time ruined his cause. In the course of three or four weeks, he made three furious assaults on the Union lines, in every one of which he was repulsed with great loss; and about the only great damage he inflicted was the killing of the Union general McPherson. By the end of August, Sherman had managed by skillful maneuvering to get around to the rear or southward of Atlanta and cut the railroads by which the Confederates obtained their supplies. This compelled them to abandon their intrenchments; and about the beginning of September Sherman was enabled to telegraph to Washington that Atlanta was won.

Upon the capture of Atlanta Sherman ordered its inhabitants to leave the place, giving them the privilege of going north or south as they might desire. About two thousand chose to go south and were transported at United States cost to Rough and Ready, an outpost in that direction; while the others were forwarded to Chattanooga. Great complaint was made at the time by the Confederates in reference to this order. Hood assumed to protest "in the name of God and humanity" against it as "unprecedented" and transcending "in studied and ingenious cruelty all acts ever brought to my attention in the dark history of war." But when it is considered that Hood himself, before abandoning the place, had destroyed all the factories and machine-shops and carried off all the food and supplies, it is plain that he was the one that had violated the laws of humanity and done an act of studied and ingenious cruelty. Sherman could not feed the inhabitants; he would not massacre them as Forrest was said to have done the people at Fort Pillow; he did not want them

to interfere with his intended further advance; and he therefore in as kind and gentle a manner as possible under the circumstances sent them where they need not starve nor be in his way.

While Sherman was at Atlanta, Jefferson Davis, the Confederate president, visited Hood at Macon and attempted to practice on Sherman substantially the same kind of a strategic game that Lee tried to play on Grant at Petersburg—with the difference that, though both attempts failed, Lee did not injure himself or his army, while Davis made a mistake which in effect materially hastened the collapse and fall of the Confederacy. At his direction, Hood, instead of falling back and harassing Sherman's further progress, moved off in a northwesterly direction by the way of Tuscumbia and Florence in northwestern Alabama, into the middle of Tennessee. Davis seems to have thought that Sherman would follow Hood to protect Nashville, just as Lee thought that Grant would weaken himself to stop Early in the Shenandoah valley. But he reckoned wrongly. Sherman did not move and had no idea of moving in that direction. As Grant, however, had left Early to be dealt with by Sheridan, so Sherman left Hood to be dealt with by Thomas, who immediately made it his business to see what he was endeavoring to accomplish. As Hood approached Nashville from the southward, he was met at Franklin by a portion of the Union army under Schofield; and a severe battle took place there on November 30, in which Hood was defeated with considerable loss. He nevertheless advanced still further towards Nashville and was met in the immediate vicinity of that place by Thomas. He had at that time about forty-four thousand men; while Thomas, after being joined by Schofield from Franklin, seems to have had not quite so many. On December 15, as Hood approached, Thomas moved out of his lines and attacked him with great effect. The conflict lasted two days. On the first, Hood was driven back some two or three miles; and on the second, he was entirely routed and his army so scattered and demoralized that, like Early's after the rout at Strasburg, it never reunited.

Meanwhile, on November 11, Sherman, after burning Atlanta and destroying all the railroads in his rear, cut the telegraph lines that had theretofore kept him in communication with

Washington and the northern states and started on his famous "march through Georgia." His forces consisted of about sixty-five thousand men; and, as these had to subsist mainly on what they could gather of the products of the country as they advanced, they were obliged to spread out to a breadth of about forty miles. For about a month, after thus plunging into the very bowels of the Confederacy, nothing was heard of him or his army at the north; and, as the days went by, great anxiety was felt. But, as it turned out, he marched all the way from Atlanta to Savannah, a distance in a straight line of about two hundred and twenty-five miles, almost without obstruction. Some small bodies of troops might have been gathered at various points to oppose him; but he managed his advance with so much skill that they could not tell where to concentrate. Nor did they know for what point he was aiming. But on December 13 he suddenly made his appearance before Fort McAllister on the Ogeechee river near Savannah, which he immediately took by assault; and thus, by the unexpected success and glorious ending of his march through the very heart of the enemy's country—especially after the fears that had been entertained for his safety—he threw the entire north from Maine to California into an ecstasy of joy. On December 20, a week after the taking of Fort McAllister, the Confederates evacuated Savannah and Sherman announced the fact to Lincoln by sending word that he begged to present to him "as a Christmas gift the city of Savannah, with one hundred and fifty heavy guns, plenty of ammunition and about twenty-five thousand bales of cotton." But—what was far more important—he also sent word that the Confederacy was nothing but an empty shell, and that he was ready with his victorious army to march northward.

About the same time that Atlanta in Georgia was taken, the port of Mobile in Alabama, which after the fall of New Orleans had become of vital importance to the Confederacy, was attacked and closed. This great service was performed by Farragut, the captor of New Orleans, then usually known as "Old Salamander." Farragut proceeded with his fleet against it in the latter part of July, 1864, and on August 5 forced his passage through a fiery rain of shot and shell into Mobile bay, captured all the

enemy's ships and took all his forts. It was the last of Farragut's splendid services to the country. He was worn out and asked to be relieved. In September of the same year he was offered the command of an expedition against Wilmington in North Carolina, which still remained to be reduced; but, on account of the state of his health, he felt obliged to decline. Upon his retirement from active service, he was received by the people with the greatest and most sincere enthusiasm. The government in his honor created the new rank of vice-admiral, to which he was appointed; and afterwards in 1866 it promoted him to the still higher rank of admiral. He retired to private life in 1868; and on August 14, 1870, he died, full of honors, at Portsmouth, New Hampshire. The expedition against Wilmington, after his declination, was committed to a combined land and naval force under General Alfred H. Terry and Admiral David D. Porter; and the place succumbed to their attacks on January 16, 1865.

The fall of Wilmington practically closed up the Confederacy to blockade runners and completely isolated it. The "anaconda" had now, so to speak, got it entirely infolded; and all that remained was to crush the life out of it. On January 15, the day before the fall of Wilmington, Sherman commenced his march northward from Savannah. His movement with his large army through South Carolina compelled the evacuation and abandonment of Charleston and other places within reach of his strong force. The Confederate general Johnston, who was again in command of an army, attempted at several places to check his advance and turn him aside; but in vain. Notwithstanding some fighting, Sherman pushed on to Goldsboro in North Carolina. Leaving his army at that point, he ran down to the coast and, taking a steamer, proceeded to the James river, where he met Lincoln and Grant and arranged with them a plan of future operations. Sheridan had just been leading a large cavalry force up the Shenandoah valley and had come around to Grant's headquarters south of Petersburg, having all along his march done great damage to the Confederates and utterly cut off their communications in the rear of Richmond.

Lee's situation was now almost desperate. His communications having been cut off, he determined to abandon Richmond

and Petersburg and make an effort to join Johnston, who had retreated from his last encounter with Sherman to Raleigh in North Carolina. With this purpose in view, intending to move by the way of Danville, he made a determined attack upon the Union lines at Fort Steadman on the east side of Petersburg; but the effort failed and the Confederates were repulsed with heavy loss. About the same time, Grant pushed his lines further to the southwest of Petersburg. On April 1, Sheridan, who commanded the advance, attacked the Confederates at Five Forks about fifteen miles southwest of Petersburg; destroyed the railroads running towards Lynchburg and Raleigh, and managed to maintain his position there. Lee thereupon, for fear of being outflanked, extended his lines further west and thereby weakened his center. Grant observing this, on the morning of April 2, made a general and combined assault and forced his way within the lines of the Confederate defenses at Petersburg. Lee at once retreated with the intention of making a final effort to join Johnston; while the advance of the Union army marched into Richmond. As it did so, the Confederate authorities, having first set fire to everything that would burn, made their exit and escaped to Danville. Grant, instead of losing any time at either Petersburg or Richmond, pressed on in pursuit of Lee. He had so many troops and had so disposed them that the Confederate army was hemmed in, without possibility of advancing further, at Appomattox Court House. And it was there, on April 9, 1865, that Lee surrendered.

As this surrender was regarded as substantially the end of the war, the terms offered by Grant and accepted by Lee were very liberal. All private property belonging to soldiers or officers was to be retained by them, not even excepting their horses; and officers as well as men were at once set free on their parole—it being at the same time understood that as long as they remained quiet and law-abiding they would not be disturbed. In the meanwhile Sherman had been making his preparations to advance upon and attack Johnston. But as soon as the news of Lee's surrender reached the still opposing forces, negotiations were opened; and on April 26 Johnston capitulated on substantially the same terms granted to Lee. There were still a few other Confederate forces in the field; but they all surrendered upon hearing of

Appomattox. And thus closed the great civil war—one of the greatest military and naval conflicts the world has ever known, engaging about two million two hundred thousand men, two-thirds of them on the Union side, and costing, in addition to hundreds of thousands of lives, so many thousands of millions of money and property as to be practically incalculable. Politically it was the logical end of the struggle, which had commenced many years before and entered upon one of its main phases with the admission of California into the Union in 1850. Much remained to be done; but the underlying cause, slavery—in the vain attempt of perpetuating which the Confederacy had ruined itself and occasioned so much loss to others—was forever destroyed, never to raise its hideous front again.

CHAPTER II.

LOW (CONTINUED).

THE attention of the people of California was so much absorbed by the war, and public sentiment was so overwhelmingly in favor of supporting the administration in its efforts to crush out rebellion, that little or no doubt existed as to the result in the state of the presidential election of 1864. A Union state convention had been held at San Francisco on March 24 of that year and delegates elected and sent to the national convention of the Union party, which was to meet at Baltimore on June 7, with instructions to vote for Lincoln. The news of the work of that convention, renominating Lincoln for president and nominating Andrew Johnson for vice-president, was received at San Francisco on June 9 and gave general satisfaction throughout the state. Subsequently Donald C. McRuer, William Higby and John Bidwell were nominated on the Union side for congress. On the other hand, the Democratic state convention met at San Francisco on May 10 and chose delegates to the Democratic national convention, which was to meet at Chicago on July 5; and on August 31 news was received of the nominations by it of George B. McClellan for president and George H. Pendleton for vice-president; and soon afterwards Joseph B. Crockett, James W. Coffroth and Jackson Temple were nominated for congress on the Democratic side.

It was one of the doctrines of the Democratic party at that time, and urged with great persistence in the platform adopted by their state convention, that the war was conducted by the abolitionists—conducted not in a manner to restore the Union, nor with any expectation that it would have such a result, but simply to abolish slavery and then revolutionize the government so as to establish a centralized power utterly subversive of the constitu-

tional rights of the states. This idea, though entirely without foundation, furnished the Democratic politicians with an opportunity of making very intemperate harangues, which were perhaps not very dangerous, but General Irvin McDowell, who had been placed in command of the United States forces and was charged with preserving and protecting the public peace on the Pacific, thought otherwise. He accordingly arrested a number of them for treasonable expressions and threw them into Fort Alcatraz. Among others he on July 25, 1864, arrested Charles L. Weller, brother of John B. Weller and chairman of the Democratic state committee, for remarks made at a political meeting. These arrests, and particularly that of Weller, inflamed the Democracy to a high pitch; and they became very warm and in some cases violent. But whatever McDowell may have intended, the administration had no desire to engage in prosecutions for treason. After Weller had remained a month in Alcatraz and entirely cooled off, a motion was made by his counsel in the United States circuit court for a grand jury to investigate any charges that might be preferred against him. The next day, on further information of the purposes of the government, the motion was withdrawn; and a few days afterwards, August 18, Weller was released upon giving a bond in the sum of twenty-five thousand dollars to bear true allegiance to the United States.

Another affair occurred about the same time, in the interior of the state, which caused great excitement. It is not likely that the Confederacy or the Democracy as such had anything to do with it; but for a while many persons supposed they had, and great indignation was expressed. On the night of June 30, 1864, the stage from Virginia City in Nevada to Sacramento was attacked by a number of men about thirteen miles above Placerville and robbed of a large amount of bullion belonging to Wells, Fargo & Co. The robbers, who proved to be members of a conspiracy gotten up in Santa Clara county for the purpose of enlisting soldiers against the government, pretended to be emissaries of the Confederacy; and, when they seized Wells, Fargo & Co.'s bullion, they gave to the stage driver a written receipt to the effect that it was received for fitting out recruits enlisted in California and purporting to be signed by R. Henry Ingram, a cap-

tain of the Confederate army. After securing their booty, the robbers proceeded to the Somerset House, where they were overhauled about daylight the next morning by a deputy sheriff named Joseph M. Staples and a constable named Ramsey; and the result was a fight in which Staples was killed. A few of the robbers were arrested; but the rest scattered and got away. Afterwards on July 15 those who had escaped were found in Santa Clara county, where another fight occurred in the course of which a few robbers were killed and a few captured. One of the captives made a confession, which led to the arrest of a number of the conspirators; and about the same time the grand jury of El Dorado county returned an indictment against Thomas B. Pool and nine other persons for the murder of Staples. In August Pool was tried and convicted of murder in the first degree and sentenced to be hanged. On appeal to the supreme court the judgment was affirmed; and Pool was executed at Placerville on September 29, 1865. Another of the gang was sent to the state prison for twenty years; but the others escaped on legal technicalities.¹

The election came off on November 8, 1864, and resulted in the choice by large majorities of the Union candidates. The Californian vote for Lincoln was a little over sixty-two thousand; that for McClellan nearly forty-four thousand. The majorities for the three Union congressmen were about in the same proportion. Nothing else was or could have been expected. On March 4, 1865, upon entering upon his second term, Lincoln closed his inaugural address in a remarkable strain of patriotism and magnanimity. "With malice towards none,"—such was his language—"with charity for all, with firmness in the right as God gives us to see the right, let us strive to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphans, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

What might have been the outcome, if Lincoln had survived to reconstruct the south, it is impossible to tell. He had done

¹ Davis' Political Conventions, 203-212; *People vs. Thomas B. Pool*, 27 Cal. 573.

so well in conducting the country through the civil war that everything good and great might have been expected. But he was not allowed to live. On the evening of April 14, five days after Lee's surrender, while attending with Major Henry R. Rathbone and another friend a performance of "Our American Cousin" at Ford's theater in Washington, he was assassinated by John Wilkes Booth, an actor, born in Maryland, son of the eminent tragedian Junius Brutus Booth and brother of the still more eminent Edwin Booth. The assassin, who was the moving spirit of a conspiracy to murder the president and the heads of the main departments of the government, stealthily entered the proscenium box occupied by the president and his friends; approached Lincoln from behind; fired a pistol-ball into the back of his head; drew a knife with which he cut Rathbone, and then, leaping from the box to the stage and flourishing his weapon dripping with blood, theatrically exclaimed, "Sic semper tyrannis: the south is avenged." Rushing then to the rear of the building, before he could be intercepted, he mounted a horse kept in readiness by one of his confederates and escaped. He was soon pursued by a squadron of troops; and twelve days afterwards, being found concealed in a barn, to which they set fire, he was shot and killed in attempting to leave the building. At the same time that Lincoln was shot, William H. Seward, the United States secretary of state, was stabbed, as he lay in his bed in his own house, by Lewis M. Powell, another of the conspiring assassins; but fortunately his wound was not mortal and in a few weeks he recovered; while the other intended victims escaped entirely. Powell, otherwise known as Payne, and three others, including a woman known as Mrs. Surratt, were afterwards tried as accessories and, being convicted of murder, were hanged; and several others, concerned in the plot but less guilty than the principals, were sentenced to imprisonment.

Lincoln, who lost consciousness upon being struck, was carried from the theater to a neighboring house, where he died the next day, April 15, 1865. The news of his death produced a most profound effect all over the country, and especially as it came so suddenly and unexpectedly in the midst of the rejoicing

over the fall of the Confederacy and the close of the war. Nowhere were these rejoicings more spontaneous and nowhere was the sorrow for Lincoln's death more heartfelt and sincere than in California. As the dreadful intelligence came flashing over the wires, while gloom settled over the more sober and serious part of the community, the more excitable classes became wild with fury against the promoters of secession sentiments and cried for vengeance. At San Francisco, on the afternoon of April 15, the day of Lincoln's death, a mob organized which attacked the newspaper offices and destroyed the printing materials of the various publications that had manifested secession proclivities, particularly the Democratic Press edited by Beriah Brown, the Occidental edited by Zachariah Montgomery, the News Letter edited by Frederick Marriott, and the Monitor, a Catholic Journal, edited by Thomas A. Brady. An attack was also made upon the office of a French newspaper, called *L'Echo du Pacifique*, edited by Etienne Derbec; but, upon representations that its destruction would involve also that of the *Alta California*, a loyal newspaper in the same building, the mob desisted. During these scenes of violence, crowds filled the streets and the greatest excitement prevailed; but by degrees the influence of the more peaceably disposed portions of the community, aided by troops and police, prevailed; and in a few hours quiet was restored.¹

Except a few outbreaks of this kind and the punishment of Lincoln's assassins, nothing that could be called punishment was exercised against the secessionists. They had been guilty of treason; and there were many demands from different quarters that the laws against treason should be rigidly enforced against them. But for various reasons, not the least of which was magnanimity on the part of the government, the leaders of the Confederacy were not even brought to trial. Jefferson Davis, the Confederate president, while endeavoring to escape after the fall of Richmond, was arrested by a detachment of cavalry at Irwinsville in Georgia and sent to Fortress Monroe. He was there confined, a close prisoner, for some time on a charge of treason. Subsequently he was released on bail furnished by

¹ Davis' Political Conventions, 213; San Francisco newspapers of the day.

Horace Greeley and a few other prominent Union men; and proceedings against him were finally abandoned. For a comparatively short period, those Confederates who had previously taken an official oath of allegiance to the United States government, were debarred from holding federal offices; but these disabilities were in a few years removed. In no other country and in no other great civil convulsion in the history of the world has there ever before been exhibited such a spectacle of moderation and enlightened humanity.

The close of the war was the occasion of a speedy split and not long afterwards of the final breaking up of the Union party. There had always been two elements in that party, which, though they held together while the war lasted, were not cordially harmonious. One was the old Republican party and the other the Douglas Democrats. They were not very strictly defined, so that it was sometimes difficult to tell who belonged to one and who to the other branch; and, when the split came, it was not exactly according to old party lines. But to a considerable extent those who had been outspoken anti-slavery Republicans from before the war remained Republicans and were heartily joined by some of those, who had been Douglas Democrats; while others of the Douglas Democrats fell into the reorganized Democracy, or the Democracy without slavery but with every desire to hinder and thwart the administration in its efforts at reconstruction of the Union. The first difficulty seems to have been occasioned by Conness, who had hitherto managed to manipulate the Union party to suit his own designs. He had succeeded in getting Low nominated and elected governor; and he now wanted to prepare the way to have him elected his colleague in the United States senate to take the place of McDougall, whose term would expire on March 3, 1867. With this object in view he had made himself active in so re-districting the state as to insure the return of as many of his adherents as possible to the legislature of 1865-6, at which McDougall's successor would have to be elected. This plan of arranging the districts without much regard to their form but so as to make the majority of the desired complexion, was an old trick, usually called "gerrymandering," and was well understood by politicians.

On account of the efforts of Conness, through his supporters in the legislature of 1863-4, to re-district the city and county of San Francisco in the interest of Low for United States senator, it was charged that he was endeavoring to throw the control of the metropolis into the hands of the rough element, sometimes known as "the boys" but more usually, on account of their affecting prize-fight fashions, as "the short-hairs." The opposing element in the Union party, including most of the old Republicans got, by way of contrast, to be called "the long-hairs;" and these distinctive names, ridiculous as they were, soon spread and became common in other parts of the state. It did not take long for a great deal of heat to be engendered. In several of the main political centers, there were violent conflicts and some disgraceful scenes. The worst of these occurred at the Union county convention held at Sacramento on July 25, 1865. The two factions were about equally divided in number and occupied opposite sides in the hall of meeting. When the convention was called to order, two persons were nominated for temporary secretary; and the long-hair candidate was declared elected. He advanced to take his seat, when the short-hair bullies intercepted him; and a fight occurred, in which both parties engaged in a hand-to-hand combat. Hickory canes were first plied; and then resort was had to the spittoons, which flew from side to side like bombs on a battle field. When these were exhausted, inkstands took their place; and finally chairs were broken up to supply clubs. Fortunately no fire-arms and no knives were used. At length, as might have been expected, the long-hairs were driven from the field, and the short-hairs reveled in their triumph.

After the fight, while the long-hairs retired to another hall and nominated a separate ticket, the short-hairs proceeded, in pursuance of the programme prepared for them, to name candidates for the legislature pledged to Low. But their pledges did him no good. He soon found that he could not stand up against the scandal and odium of such disgraceful scenes as were thus enacted in his interest. Whether he had had anything to do with them or not, they were naturally attributed to a determination on his part to win, even at the risk of disrupting his party;

and he was charged with making use of his position as governor to mount to the position of United States senator. Under the circumstances, he felt obliged to withdraw from the senatorial contest, which he accordingly did on August 2 by a card published in the newspapers.¹

The Union state convention met at Sacramento on August 16, 1865. There was very little for it to do, as the only office to be filled was that of justice of the supreme court. Delegates of both factions were present; several contests took place, and much bitterness of feeling was manifested. But in the naming of a candidate nearly all united in the re-nomination of Silas W. Sanderson, who had filled the office with general satisfaction since the beginning of 1864. Among the resolutions of this convention was one recognizing Andrew Johnson as a worthy successor of Lincoln, another recommending an amendment to the federal constitution prohibiting slavery, and another in favor of the Monroe doctrine and against the attempted subversion of liberty in the neighboring republic of Mexico by the establishment over it with foreign arms of imperial power. At the same time, the convention voted down by a very large and decisive majority a proposition to adopt greenbacks as the state currency and repeal the gold coin or specific contract law. The Democratic state convention met at Sacramento on September 19 and nominated Henry H. Hartley for justice of the supreme court. The chief feature of its resolutions was opposition to negro suffrage and to the political or social equality in any form of the negro with the white man. It also indorsed the Monroe doctrine and the specific contract law. On October 18 the judicial election took place; and Sanderson was elected by a vote of over thirty-four thousand against less than twenty-eight thousand for Hartley.²

Notwithstanding the efforts of Conness by means of the short-hair faction to continue in control of the state, his opponents, when the issue was once made, gave him an unequivocal defeat. At the general election for members of the legislature held on September 6, 1865, the long-hairs obtained a decided majority;

¹ Davis' Political Conventions, 214-219.

² Davis' Political Conventions, 220-226.

and from that moment what was usually known, by analogy with mining speculations, as "Conness stock" began to decline. On December 4, the legislature of 1865-6 met, and as soon as the two houses were organized Governor Low sent in his first biennial message. He reported a great reduction of the ordinary public debt and good prospects of further reductions in the near future. But the exigencies of the recent war had required a large volunteer force; and an extraordinary expense had to be incurred in the way of bounties and extra pay at the rate of five dollars per month per man during service. A portion of this expense had been provided for by the issue of state bonds to the amount of six hundred thousand dollars under an act for the relief of the California volunteers passed April 27, 1863; but there still remained claims exceeding two hundred and thirty-six thousand dollars, which were just and should be honored. He called attention to the slow progress of the capitol building, to the great increase of insane patients at Stockton as "limited only by the capacity of the asylum," and to an improvement in the affairs of the state prison. The number of prisoners on October 31, 1865, was six hundred and forty-eight, ninety-seven more than on December 15, 1863; but this increase, he said, was not owing to an increase of crime but to the fact that there had been few or no escapes, as was common before. Since the latter date only one had got away; whereas, previous to that time since January, 1854, there had been an average loss of over thirty-five per year. Another cause was the fact that he had granted only twenty-two pardons or at the rate of eleven each year, whereas during the preceding ten years the average was twenty-five per year.¹

After a general review of the condition of various other institutions and of economical affairs in the state, Low presented the resolution of congress, submitting to the legislatures of the several states the proposed new thirteenth amendment to the constitution of the United States, abolishing slavery. He recommended its hearty and prompt adoption "in order that no question may arise in the future to perplex the people or again deluge the land with blood." He then proceeded to discuss federal relations and

¹ Senate Journal, 1865-6, 5-38.

said that the great national question engaging attention was the status of the rebellious states and how they were to be reconstructed. There were many different theories and many different plans proposed; but among them all he was disposed to believe that the president of the United States would find the right course, as he seemed "to be desirous of arriving at practical results without paying deference to abstruse theories." In conclusion, Low suggested, if it were true as reported that the rebellious states were determined to oppose the efforts of the government at reconstruction, that the vote should be given to the enfranchised negroes of the south, and that a further amendment to the constitution of the United States should secure them in that franchise.¹

On December 16, 1865, the houses met in joint convention for the election of a United States senator for a term of six years from March 4, 1867, in place of James A. McDougall. The Union caucus, on account of the difficulty of agreeing upon a more prominent candidate, had nominated Cornelius Cole; and he was accordingly elected by a vote of ninety-two as against twenty-six complimentary votes thrown for William T. Coleman.² A few days afterwards the governor approved a joint resolution ratifying the thirteenth amendment to the constitution of the United States, which had passed both houses by large majorities.³ It was about this time that the true character of Andrew Johnson, the president of the United States, began to manifest itself and the struggle commenced between him and congress, which led to his impeachment. It soon became evident that the Union party, misled by Johnson's professions, had committed a very great mistake in making him vice-president of the United States. Possibly, if he had remained in that position, no fault would have been found. But when he took the reins in his own hands as president, almost everything he did was in opposition to the party which had placed him in power; and hardly anything could have been more satisfactory to those who had opposed the war and who still opposed such reconstruction as would

¹ Senate Journal, 1865-6, 40-57.

² Senate Journal, 1865-6, 94-96.

³ Stats. 1865-6, 896; Assembly Journal, 1865-6, 149.

1863. The error was at once corrected; but only a few days subsequently the senate sent back one of his own messages for the correction of an error—thus squaring the account.¹

On December 20 a bill had been introduced into the senate for the repeal of the specific contract law. It had occasioned much disagreement and discussion and finally on February 16, after many postponements, it had been defeated by striking out the enacting clause by a vote of eighteen to ten.² A day or two afterwards a San Francisco newspaper, called the American Flag, owned and edited by Daniel O. McCarthy, came out in a violent article, charging that the defeat of the repeal bill had cost bankers and others about one hundred and eight thousand dollars, of which seven senators received eighty-four thousand dollars or twelve thousand dollars each, and the balance was expended in paying lobbyists and corruptionists. On February 10, a resolution was adopted referring to these charges and appointing six of the senators, who had been in favor of the bill, a committee to investigate the charges and ascertain whether there had been bribery and corruption on the part of the seven senators or any of them or only willful and malicious public slander on the part of McCarthy. On the next day McCarthy, who had been sent for, was called before the bar of the senate. Being asked a few preliminary questions, he answered that he was editor and proprietor of the newspaper; that he was responsible for articles that appeared in it, and that he had dictated and approved the article complained of. But by that time, finding that the investigation was likely to become too hot for him and on a pretense that an open examination would enable the guilty ones to escape, he refused to answer any more questions. When asked whether he knew of any corruption on the part of any senator or of any fact tending to show corruption, he declined to answer. When asked the name of any senator he had referred to as among those he had charged with corruption, he declined to answer. When asked the name of any person from whom he had derived any information on the subject of his charges, he in like manner declined to answer.

¹ Senate Journal, 1865-6, 227, 238, 264, 448; Assembly Journal, 1865-6, 319, 522.

² Senate Journal, 1865-6, 108, 204, 303.

Under the circumstances it seemed plain that McCarthy was guilty of contempt in refusing to answer and doubtless of falsehood in making his charges. A resolution finding him guilty of contempt and ordering his arrest and commitment to and confinement in the Sacramento county jail, until he should purge himself by answering the questions propounded, was adopted on February 21; and thereupon he was taken into custody and thrust into prison.¹ On March 7 a resolution was adopted that he should be discharged if he would disclose under oath to the committee of investigation the names of the witnesses by whom he had expected to prove his charges, the names of senators supposed to have received bribes or any other matter or fact that would enable the committee to intelligently investigate the alleged corruption; but McCarthy now declined to give any information until he should be released from custody. That no possible obstacle or pretense might stand in the way and that McCarthy might have no further subterfuge, the senate on March 19 discharged him from custody. But, as was perhaps to have been expected, he still refused to give any information for the reason undoubtedly that he had never had any; and subsequently, on March 30, the senate closed the business by adopting a resolution, reciting the facts and declaring that McCarthy's article was "wantonly and maliciously false, defamatory and libelous both to the senate and the people of the state represented therein."²

An extensive move in the name of charity upon the state treasury was made at this session of the legislature. A private association, known as the Sisters of Charity of Los Angeles, started the project by a petition, presented in the senate, for a donation to an orphan asylum under its charge; and this was followed by a flood of petitions from similar institutions in different parts of the country. The finance committee, to which all were referred, held them till within a day or two of the end of the session and then, by reporting them back without recommendation, did an effective piece of legislative economy. A bill to allow Mongolians, Chinese and Indians to testify in any action

¹ Senate Journal, 1865-6, 321-344.

² Senate Journal, 1865-6, 400, 500, 661.

or proceeding, introduced in the senate on December 18, 1865, was held up in the judiciary committee till near the end of the session and killed in much the same manner. An attempt was made to pass an eight-hour labor law; but there were several opposing remonstrances, purporting to be by mechanics; and it failed. On the other hand several very important laws passed—one a registry law; another an act, known as the Porter law, for the protection of primary elections and the prevention of fraud against them; another a law supplementing an act of 1863 and rendering feasible the widening of Kearny street in San Francisco, and another a law for a paid fire department in San Francisco. While the registry law and the Porter law tended to purify elections throughout the state, the Kearny street act made a beautiful and popular thoroughfare out of a narrow and inconvenient one; and the act last named made a complete change, and for the better in many respects, in the fire department of the metropolis. It is difficult to estimate the public benefit of these acts. An act was also passed authorizing county courts to change names—and few or no special bills for that purpose thenceforth took up the time and attention of the legislature.¹

At this legislature also, an attempt was made to change the name of Mount Diablo, or Monte del Diablo as called in Spanish, to Kahwookum, which was said to have been the original Indian name. A petition to that effect, presented in the senate by Henry L. Dodge of San Francisco, was referred to the committee on public morals. Charles B. Porter of Contra Costa county for that committee, on the last day of the session, reported that the legislature had no authority to change the name of a conspicuous landmark, which ran through the records of the United States land department, the charts of navigators and the transactions of scientific societies throughout the world; and, further, that the committee found nothing in the name of Mount Diablo that need be construed offensively. And that was the last of the proposition.²

¹ Senate Journal, 1865-6, 103, 161, 392, 512, 724, 735, 736; Assembly Journal, 1865-6, 292, 456; Stats. 1865-6, 27, 138, 288, 538.

² Senate Journal, 1865-6, 172, 716, 717.

Not long after the adjournment of the legislature on April 2, 1866, parties, and particularly the Union party, began to talk about the elections which were to take place in the autumn of 1867. Notwithstanding the trouble Conness had caused in endeavoring to force the election of Low as United States senator and notwithstanding his failure and the unpopularity which he had incurred on account of his apparent determination to run things to suit his own purposes, even at the risk of dividing and destroying the Union party, he still assumed control of Union politics; and, by his very great skill in manipulating the short-hairs as against the long-hairs, he managed to secure the nominations of the Union state convention, which met at Sacramento on June 12, 1867. Among the candidates supported by him, and whom he succeeded in having nominated, were George C. Gorham for governor, William H. Parks for secretary of state, Josiah Howell for controller and Daniel O. McCarthy for state printer.

The fruit of Conness' management soon appeared. The independent press, including the most influential newspapers in the state, hitherto strong for the Union candidates, denounced Conness' political trickery, charged him with fraud and demanded the withdrawal of Gorham, Parks, Howell and McCarthy as nominations inflicted on the Union party and utterly unfit to be made. As, however, no effort was manifested and no thought entertained by Conness of revising or pruning his ticket, a movement was started by various portions of the long-hair element to get up a new ticket; and the result was the revival or re-initiation of the Republican party. This new party, afterwards powerful in the state, hastily arranged a state convention, which met at Sacramento on July 16 and nominated first John Bidwell, who declined, and then Caleb T. Fay for governor, and John G. McCallum, William Jones and Edward G. Jefferis in place of Parks, Howell and McCarthy. The Democratic state convention met at San Francisco on June 19 and nominated Henry H. Haight for governor, William Holden for lieutenant-governor, H. L. Nichols for secretary of state, Robert Watt for controller, Daniel W. Gelwicks for state printer and so on, naming a full state ticket.

On September 4, the election took place, and the Union party met with its first defeat since the breaking out of the war. The campaign was prosecuted on each side with animation and in some respects with bitterness. The independent press kept up a constant fire on Gorham and his ostracized associates; and the general desire seemed to be not so much to elect the Democrats as to defeat Conness. The result of the ballot was the election of Haight by nearly fifty thousand votes as against a little over forty thousand for Gorham and two thousand for Fay. Nichols obtained a majority of about seven thousand over Parks; Watt about the same over Howell and Gelwicks about ten thousand over McCarthy, while Jefferis received about four and a half thousand. Two Democrats, Samuel B. Axtell and James A. Johnson, and one Union man, William Higby, were elected representatives in congress. A majority of Democrats were also elected to the legislature; and at the judicial election, which took place on October 16, the Democrat Royal T. Sprague was elected justice of the supreme court by nearly four thousand votes over John Currey, and the Democrat O. P. Fitzgerald superintendent of public instruction by about fifteen hundred over John Swett.¹

The legislature of 1867-8 met at Sacramento on December 2, 1867; and on December 4 Low presented his last message. Notwithstanding the defeat of his party, and perhaps to some extent on account of it, he spoke out boldly and in many respects well in regard to public affairs. He said that the financial condition of the state was highly satisfactory and the speedy liquidation of the public debt assured, if prudence and economy were practiced. The total debt at that time was over five millions; but the resources, applicable to payment of interest and creation of sinking funds, would wipe it off within ten years. He next turned to the illiberal and barbarous provisions of the law excluding Mongolian and Indian testimony from courts of justice in cases where a white person was a party; and he took strong ground against them. It required considerable courage to do so for the reason that there was very great prejudice in the public mind against Mongolians, and the Chinese question had been

¹ Davis' Political Conventions, 243-265; Senate Journal, 1867-8, 92.

made an issue in the recent campaign. Each of the candidates for governor had been asked to express his opinion on the subject; and as Gorham, the candidate of his own party, had been the only one that had the honesty and at the same time the imprudence to express himself opposed to the anti-Chinese movement, and had in consequence lost many votes and impaired his future political prospects, no one but a bold man would dare to say a word that could in any manner be construed to favor the Chinese. Low said that he fully concurred in the recommendations of the attorney-general, John G. McCullough, that the door should be thrown wide open for the admission of testimony and that juries or courts should be allowed unrestricted latitude in judging of its quality. He added that the age, when it was supposed a person could not be relied upon to testify to the truth unless his religious belief accorded with public sentiment, and when it was supposed a butcher valued human life too lightly to sit on a jury, had passed away; and he earnestly hoped that all relics of the dark ages might be swept from the statute-book of California.¹

Low next, after some remarks upon the confusion which had been introduced into the system of disposing of state lands and was in great need of amendment, proceeded to matters of more wide-spread interest. He said that the special judicial election had been productive of no substantial good, but on the contrary was a burden and should be done away with. He also presented the fourteenth amendment to the constitution of the United States; explained its provisions, and recommended their adoption, confidently trusting, as he expressed it, that California would not mar its record for loyalty by rejecting them. He then spoke of the struggle which was being maintained at Washington by congress against President Johnson in regard to the reconstruction of the rebellious states; characterized Johnson as a "new ruler, filled with pride, ambition and love of power," who had "essayed to set aside the will of the people as expressed through their representatives and substitute instead his own wicked policy," and rejoiced that the people of the United States had, through elections in the usual form, "so strengthened the

¹Senate Journal, 1867-8, 32-34; Davis' Political Conventions, 241, 242.

hands of congress as to enable it to go forward in the work of reconstruction in accordance with the demands of national justice and national security."

He also called attention to the facts that the "area of freedom" had been enlarged by the acquisition of Russian America and that the sister republic of Mexico had suppressed an armed invasion by "one of the most powerful nations of Europe, aided by large numbers of her own rebellious citizens" and, after years of struggle in the face of discouragement, had finally driven "the invader from her soil and meted out condign punishment to the cruel leaders." He congratulated the people of the state on general progress in intellectual and moral advancement and on success in every branch of domestic industry. He said that since 1863, or during his administration, the assessed value of property in the state had increased nearly forty millions of dollars and that the actual values were estimated to largely exceed those fixed by assessors. Manufactures and agriculture had increased steadily and healthily, and commerce had developed to meet the requirements of the Pacific coast; while steam communication had been successfully established with the Hawaiian Islands, China and Japan, giving promise of an extended trade with those countries.¹

¹Senate Journal, 1867-8, 35-53.

CHAPTER III.

HAIGHT.

HENRY H. HAIGHT was the tenth state governor of California. He was born at Rochester, New York, on May 20, 1825. In 1840 he entered Yale college and graduated in 1844. Upon leaving college, he returned to his father, Fletcher M. Haight, then a practicing attorney of St. Louis, Missouri, and began reading law in his office. In 1847 he was admitted to the bar and entered into partnership with his father. But much of his time was devoted to politics; and for a while he published at St. Louis a free-soil newspaper in which there was nothing too severe for him to say against slavery, the slave-holding power and the Democratic party. In 1849 he embarked for California and arrived at San Francisco on January 20, 1850. In California he had an uncle, Samuel W. Haight, who had come out in Stevenson's regiment in 1847; and he himself was soon followed by another uncle, Henry Haight, manager of the banking house of Page, Bacon & Co., and subsequently, about 1854, by his father. Almost immediately upon reaching San Francisco, he entered upon the practice of law at that place and for a time was a partner of James A. McDougall; but, upon his father's arrival, he formed a new partnership with him and so continued, until the father, Fletcher M. Haight, was appointed by President Lincoln United States district judge for the southern district of California—an office which he held until his death.

There seem to have been several occasions in the early days in which the future governor took part in political conflicts. He had advocated the claims of and voted for Fremont in 1856; but he never occupied a position of prominence until 1859 when the Republican state convention, which met at Sacramento in June, made him chairman of the Republican state committee. He was

then known as one of the straightest of the so-called Straight Republicans—men who were not only Republicans but such uncompromising Republicans that they were in favor of running a straight Republican ticket at the hazard of defeat, and opposed to joining with the anti-Lecompton Democrats in a Union party though almost certain of thereby securing success. On February 22, 1860, he called together the Republican state convention of that year at Sacramento, being the same body that sent delegates to the Republican national convention of Chicago which nominated Lincoln for president. From that period until the presidential election in November, 1860, he was very active, devoting much attention to his duties as chairman of the committee and spending much time in writing straight-out Republican articles for the newspapers. At the election he voted for Lincoln; and, for some time after the inauguration and the commencement of the civil war, he professed to be and was supposed to be as determined and confirmed a Republican as any man in the party.¹

But in the course of a year or two, either because he changed his opinions on the subject of slavery or had in fact never been in favor of abolition, or because he received no such recognition as he thought he deserved for his services and considered himself slighted by the Republican party—for different persons gave different reasons—he became an out-and-out Democrat and, turning against Lincoln, labored and voted for his Democratic opponent, George B. McClellan. Whatever may have been the reasons for his change of position, it is certain that the Democratic party accepted his advances and tender of allegiance, and at the very first opportunity in 1867 rewarded his adhesion by nominating him to the office of governor. There had been two other candidates for the nomination, General William S. Rosecrans and William M. Lent; but both had withdrawn and left the course free to Haight. It may be that there was much uncertainty as to an election, for the reason that the Union party had, since the beginning of the war up to that time, held undisputed sway in the state; but Conness' management, as has been seen, had so divided and split up that party as to completely wreck it—so wreck it in fact that practically the entire Demo-

¹ Davis' Political Conventions, 99, 109.

cratic ticket was elected, including almost all the members of the legislature; and, though on account of hold-overs there still remained a Union majority in the senate, the Union party never recovered from the blow.

Some idea of Haight's new position may be gained from his inaugural address. This document, which was much longer than is usual on such occasions, he read to the legislature when sworn into office on December 5, 1867. After some preliminaries, he said that the war had not only put an end to any claim of the right of secession but also that slavery, the great subject of contention between the north and the south, had perished in the struggle and could never in any form be revived. He then proceeded to the main purpose of his remarks, which seemed to be a justification of his own political conduct by an arraignment of the policy of congress in reference to reconstruction. "There is no intelligent reader of history," he said, "who is not aware that an unlimited democratic government is more objectionable and dangerous than an absolute monarchy. It is a familiar saying that one tyrant is preferable to a multitude. The object of checks and limitations under a republican government is to protect the minority from oppression by the majority. It is stated by all intelligent writers that there is more danger of the overthrow of free governments by legislative usurpations than by any other cause." He then went on to asseverate that it had become a common thing to deride appeals to the United States constitution and to speak of the powers of congress as though congress were supreme. But "those," he continued, "who advocate the doctrine that congress can override the constitution, or act 'outside of the constitution,' or under the plea of necessity exercise powers not granted by that instrument, are aiding to establish a principle that will destroy whatever is sacred and valuable in our free institutions." He next, after some remarks upon the personal rights secured by the constitution and the respective powers of the federal and state governments, proceeded to remark that "the late war was urged on our part to enforce the authority of the federal government in the southern states and prevent the disruption of the Union and not to destroy the liberties of any portion of the people or create a

negro empire on our southern border. At the commencement of the war, congress made a formal declaration of its object in a resolution that 'the war was not waged on our part in any spirit of oppression, nor in any spirit of conquest or subjugation, nor for the purpose of overthrowing or interfering with the rights or established institutions of those states; but to defend and maintain the supremacy of the constitution and preserve the Union with all the dignity, equality and rights of the several states unimpaired.'"

He then insisted that the reconstruction enactments of congress, embodied principally in the so-called military reconstruction acts passed in March and July, 1867, "assume that ten of the southern states are conquered territory and proceed to divide them into five military districts, each under the command of a military officer not below the grade of brigadier-general. They abolish in effect their right of trial by jury and make the accused subject to trial by military commissions; they prohibit any interference by the state authorities, thereby abolishing the writ of habeas corpus; they ignore presentments by grand juries; they tacitly permit the suppression of public journals by military orders, and allow no appeal from military sentence, except in capital cases, to the clemency of the president. They assume the control of the elective franchise, which the constitution vests exclusively in the states; and after disfranchising a large class of the white population confer the rights of suffrage upon all negroes over twenty-one without regard to qualification for its intelligent exercise." "In these measures," he continued, "congress commits the solecism of legislating martial law—that is: under a constitutional government, in a period of profound peace, the national legislature enacts that in ten states of the Union there shall be no law but the will of the department commander, and that the political power in those states shall be given to the negroes, who can thereby control their domestic administration and send to congress negro senators and representatives to assist in making laws to govern the white people of the north. Thus the reconstruction policy of congress is the subversion of all civil government under military rule; the abolition of those personal rights guaranteed by the constitution and

held sacred since the government was formed, and the subjection of the white population of the southern states, men, women and children, to the domination of a mass of ignorant negroes just freed from slavery."

"That any white man," he went on, "could be found on this continent to sanction a policy so subversive of rational liberty, and in the end so fatal to the Union and the government, is a subject of unceasing astonishment. These measures are a violation of the fundamental principles of the constitution and of liberty, of every dictate of sound policy, of every sentiment of humanity and of Christianity, and a disgrace to the country and to the age in which we live. . In using this strong condemnatory language I am not insensible to the fact that thousands of good men appear to approve of the measures of congress, nor do I presume to sit in judgment on their motives. Many of them, doubtless, are unconsciously influenced by the passions and resentments of the war and, in their anxiety to guard against an imaginary danger, sanction principles the tendency of which is subversive of republican institutions." And in much the same strain he went on, urging in effect the ultra secession Democratic doctrine that immediately after the war the rebels should have been admitted to congress on the same terms of representation as before. "What is there," he insisted, "in the crushed and subdued people of the southern states, with their slaves emancipated, which should excite any fear on the part of a powerful and victorious government? It is inconceivable that any person should seriously apprehend resistance to federal authority for a generation to come, if the people of those states are not goaded to desperation by wanton persecution and oppression. Had their representatives been admitted to congress in December, 1865, quiet and harmony would have been restored long before this time and industry would have revived there. Population and capital would have flowed in from the north and Europe; but neither population nor capital will trust themselves where civil rights exist only at the pleasure of the military and the negro has political control."

Haight's entire inaugural, as might perhaps have been expected of a person occupying his equivocal position, was devoted almost

entirely to an exposition of the extreme doctrines of the party he had espoused and opposition to the reconstruction policy of the party he had deserted. He had something to say against Chinese immigration and the incoming of any other Mongolian or effete Asiatic race; against special legislation; in favor of an eight-hour law, of economy and retrenchment in public expenditures, of a revision of the statutes and of appointing judges to hold office during good behavior; but in general his remarks were devoted to attacking congress and the Republican party and reviling what he called the "brutal ignorance and barbarism" of negro suffrage. It was perhaps a matter of little or no importance, though it might have been interesting to know, why he had so suddenly and so completely changed from a bitter Republican to a violent Democrat; but he said nothing indicating or suggesting the reasons of his tergiversation, confining his indictment against the Republican party exclusively to what had taken place since he abandoned it and voted against Lincoln in 1864.¹

One of the first and most remarkable moves in the new legislature of 1867-8 was a joint resolution offered in the senate on December 14, 1867, by William J. Shaw. It declared it to be "the moral and humane as well as governmental duty of the United States to acquire the possession of all vacant Mexican territory lying north of the twenty-sixth degree of north latitude;" "that such possession should be acquired peaceably and fairly but without hesitation, without failure and without delay," and it directed the senators and representatives in congress to urge upon the legislative and executive departments of the general government "the necessity and humanity of such immediate acquisition, until the same shall be accomplished."² Had such a resolution been offered a few years earlier, it would at once have been pronounced a device for the extension of slave territory and would doubtless have caused great commotion; but, though presented by a Democrat, it attracted little or no attention; was not even considered important enough to be ordered printed; never was brought to a vote, and accomplished nothing more than to recall two historical events of much interest to California that had taken place the

¹Senate Journal, 1867-8, 96-107.

²Senate Journal, 1867-8, 142.

previous summer, and had been briefly noticed in Low's message at the beginning of the session, as already stated.

The first of these events was the liberation of Mexico, after a long series of intestine disorders, from the despotism and tyranny of a European invader. The end of the Mexican war in 1848 was followed by the forced retirement of Santa Anna to Jamaica and the election of General José Joaquín de Herrera to the presidency of the republic. Herrera was succeeded in 1851 by General Mariano Arista. In 1853 Santa Anna was recalled and for the fifth time assumed the presidency, or more properly speaking the dictatorship, of Mexico. He, however, had learned nothing by his experiences and in 1855 was again driven from the country. Thereupon General Martín Carrera became president but was soon succeeded by General Juan Álvarez, who in a few months delegated his authority to General Ignacio Comonfort. In 1856 Comonfort, on account of the opposition to his government by the Mexican clergy, ordered the confiscation of the church property and forbade the holding of real estate by either church or clergy. This proceeding, as was perhaps to have been expected, evoked revolts in certain quarters, which were however promptly repressed; and there was a good prospect of progress and advance. But on February 5, 1857, a new constitution was promulgated, which met with violent opposition from the Mexican army; and the result was a revolution which in 1858 ended in the resignation of Comonfort and the elevation to the presidency, by a faction known as the Conservatives, of General Félix Zuloaga. As, however, according to the provisions of the new constitution, the resignation of Comonfort devolved the office upon Benito Pablo Juárez, chief justice of the supreme court, that remarkable man and distinguished representative of the Liberal party came forward and not only expressed, but by his actions manifested, a determination to maintain his rights and carry out the trust constitutionally reposed in him.

Juárez assembled an army and gave battle for his cause; but, being defeated by Zuloaga, he retired to Panama and thence proceeded to Vera Cruz, where he set up a government on a small scale as constitutional president. Not long afterwards Zuloaga was deposed by General Robles and General Robles in 1859 by

forty thousand men and being joined by the defeated Conservatives and the clergy, it was impossible for Juarez to make headway against them; and the constitutional president and patriot was compelled to retire to the extreme northern departments of the country; and for some years, though persistent and unyielding in his efforts for the republic, he accomplished in substance nothing, but was compelled, something like a modern Alfred, to lurk on the borders and bide his time. His condition, except for his own strength of character and indomitable will, was low enough; but it was in many respects preferable to that of his opponent Maximilian. That unfortunate dupe of presumption on his own part and fraud on that of his supporters had barely landed, and been carried under bowers of roses and triumphal arches to the capital, before he found that he had been completely deceived by his pretended friends; that he could not trust them; that he was not wanted by the Mexican nation, and in a word that his empire was a complete delusion.

Possibly with ability and management he might still have accomplished something and maintained his government; but, though not a vicious man, he was certainly a very weak and very imprudent one. Without the wisdom of appreciating his real situation and adhering to those who had placed him in his position and who alone were interested in retaining him, wicked as they were, he petulantly broke away from them and attempted the impracticable task of forming a coalition with those who were fundamentally opposed to his pretensions and even to his presence in Mexico. The result was a dismal failure; he lost the support of all parties and was left to depend almost exclusively upon the uncertain and unreliable aid of Louis Napoleon. This individual, in a comparatively short time after launching his Mexican empire, found that he had made a very great mistake; the southern Confederacy upon whose support he confidently counted had collapsed and come to an end; the United States government almost immediately afterwards, at the instance of William H. Seward, the secretary of state, in a calm and quiet but decided manner, had informed him that it could not look with indifference upon his interference with Mexico and suggested that he should withdraw his troops. The suggestion did not

need to be repeated; the Mexican empire had been and continued to be a great burden to him; it had cost vast sums; it was now certain that the Mexican people would not accept it; after the fall of secession and slavery there was no hope to maintain it; and Louis Napoleon, apparently glad of the opportunity to get out of a bad bargain and a losing enterprise, acceded to the suggestion and agreed to withdraw.

Maximilian was notified of the proposed withdrawal of the French troops and an opportunity was offered him to return to Europe, whither he had already sent Carlota to solicit aid from other sovereigns. He was also advised to abdicate; and it seems that he at one time thought of doing so. However this may have been, and whether he intended to abdicate and leave for Europe or leave for Europe without abdicating or not to do either one thing or the other, it is certain that he proceeded in October, 1866, as far towards Vera Cruz, where a vessel was waiting for him, as Orizaba. There, if he had had an intention of going further, he found that he had a new cause of indignation against the French general, François Achille Bazaine, with whom he had previously quarreled; or, possibly, he first began to realize what a sorry figure he would make if he should return to Europe; and, changing his mind, he determined to remain. Though by this time the French forces had withdrawn and the Republican forces had followed and taken possession of almost all the towns on their route, the capital and a few other cities, one of which was Querétaro, still remained in the hands of the Conservatives. With characteristic instability Maximilian now threw himself entirely and unreservedly into the hands of the church party, which he had previously treated with disdain and contempt; and, on its promise to supply money and support, he returned to the city of Mexico. A small army to replace the French was hastily collected and placed under the command of Generals Miramon, Leonardo Marquez and Tomas Mejia; and, as the now triumphant Republicans under Juarez were on every side advancing and threatening them, Maximilian and his army under Miramon and Mejia, leaving Marquez in the capital, retired to and shut themselves up in Querétaro.

In a short time afterwards, the Republicans appeared before

Querétaro; and, after a siege of some months, on May 15, 1867, it was taken and Maximilian and his generals Miramon and Mejia captured. They were at once subjected to trial by martial law; in a few weeks were convicted of capital offenses against the independence and sovereignty of Mexico, and sentenced to be shot. Great efforts were made by representatives of the United States, France and England to save Maximilian's life; but in vain. Juarez would undoubtedly have spared him if he could have obeyed his own feelings. But he had a duty to perform. The future of the country demanded the sacrifice, and Juarez was therefore deaf to prayers. Nor could Maximilian complain of being treated worse than he had treated many others. On October 3, 1865, he had issued an infamous edict, ordering the execution as bandits of all Republican officers who should be taken prisoners; and under it a number of brave defenders of their country were ruthlessly deprived of life. But, whatever may have been his conduct before, he manifested a courageous spirit at the last and met his fate bravely. On the morning of June 19, 1867, he with Miramon and Mejia was taken to the place of execution at Cerro de las Campanas near Querétaro and placed before a file of armed soldiers. Maximilian, who had been placed in the center, after taking leave of his companions, turned to Miramon and, saying that he deserved the place of honor, stepped aside and placed him in the middle. The fatal fire was then delivered; and Mexico so far was avenged.

The other historical event of great importance to California, which took place in 1867 and was forcibly recalled by Shaw's extraordinary resolution to acquire the northern part of Mexico, was the purchase from the Russian government of the Russian possessions in America or what has been since known as the territory of Alaska. This was consummated by a treaty of cession, signed at Washington on March 30, 1867, and proclaimed June 20, 1867. The negotiator on the part of the United States was William H. Seward, the Republican secretary of state, and the price paid was seven million two hundred thousand dollars. The territory acquired consisted of all that immense portion of the continent west of the one hundred and forty-first meridian of longitude west of Greenwich, including the



Aleutian Islands and all the coast and islands north of Queen Charlotte's Island. Its extreme length north and south is about eleven hundred miles; its greatest breadth east and west about eight hundred; its coast line, counting those of islands and inlets, nearly eight thousand miles, and its area a little over five hundred and eighty thousand square miles.

It is perhaps possible that Shaw's proposition for the United States to acquire all of Mexico north of the twenty-sixth degree of north latitude may have been intended by him as a sort of Democratic off-set to the purchase of Alaska by a Republican or Union administration. On the other hand, Shaw may have really supposed his project a wise and humane one in view of the troubles that had for so many years afflicted Mexico. But if he so thought, he certainly knew nothing of the subject which he was thus attempting so freely to deal with. Had he had any adequate conception of the struggle, which had just been brought to a successful termination, or anything like a correct idea of the character of Juarez who was then at the head of Mexican affairs, he would never have seriously thought of such a proposition as he made. But though he was seriously in earnest, and became incensed when a motion was facetiously made to refer his project to the committee on public morals, he, as before stated, failed to convince or even interest anybody else; and his resolution after several postponements died of inanition.

On December 20, 1867, Eugene Casserly was elected by the two houses of the legislature in joint convention United States senator for a full term to succeed John Conness. He was chosen as a Democrat on the third ballot, receiving sixty-nine votes as against forty-five, including a majority of the senate, thrown for Thomas A. Brown. Though this may not have been, and doubtless was not, the first senatorial election in which votes were directly purchased for money, it was the first at which charges of that kind of corruption made very much noise. On December 17, the day on which the voting commenced, William J. Shaw, the same Democratic senator who had introduced the remarkable resolution about acquiring Mexican territory, gave notice of an act to punish the offense of bribing a legislator to vote for a particular person for United States senator, with

imprisonment in the state prison for not less than five nor more than twenty-five years. A month subsequently, Shaw again rose and, having apparently found that he had got his party into trouble, asked leave to withdraw his notice; whereupon Lansing B. Mizner, a Union man, gave notice of a similar bill and also of a resolution for an investigation of the recent election. He subsequently introduced his resolution, which after some modification was adopted by the senate; but the assembly refused its concurrence; and the whole subject, so far as that legislature was concerned, was indefinitely postponed. But, though the legislature thus refused to pursue the investigation, the charges of corruption and bribery, which were directed not against Casserly but against some of his friends acting without his knowledge or concurrence, continued to be talked about. The annoyance thereby occasioned, conjoined with rapidly failing health, caused Casserly in November, 1873, to resign his seat in the United States senate after a service of a little over four years; and thereupon the subject dropped.¹

National politics, particularly in reference to the reconstruction of the southern states, as might have been expected, attracted a good deal of attention from the legislature of 1867-8. On December 14, 1867, only a few days after the commencement of the session, George Pearce introduced a resolution into the senate that the people of the United States owed it to themselves and to posterity to resist every attempt to count at the next presidential election the electoral vote of any state to be cast under or by virtue of the reconstruction acts of congress. Later in the session, he introduced another resolution expressing disapprobation of the refusal of congress to admit members elected to that body from the state of Kentucky, and also against the action of the United States senate in attempting to force ex-secretary of war Stanton into the cabinet of President Johnson. These resolutions of Pearce, together with one by his political partner Shaw, against the action of congress in opposition to President Johnson—all of which seem to have been designed merely for the object of furnishing opportunities for political speeches—were referred to the committee on federal relations,

¹Senate Journal, 1867-8, 152, 158, 181, 239, 275, 351.

at whose suggestions they were all indefinitely postponed; and the country was quite as safe as if they had been adopted.¹

Another series of resolutions of much the same character, but from the side of the Union party, was introduced into the senate on February 28, 1868, by E. H. Heacock. They declared the course of President Johnson in removing Edwin M. Stanton from the position of United States secretary of war to be in direct violation of the act of congress, known as the tenure of office act; pronounced such action a high misdemeanor and sufficient cause for impeachment, and directed the governor to telegraph a copy of them to the president of the senate and speaker of the house of representatives at Washington. These resolutions were, after a contest, adopted by a vote of seventeen to twelve and sent to the governor. A few days afterwards Haight replied with a lengthy message, declining to transmit the resolutions as directed and giving as his reason that the United States senate was sitting as a court of impeachment to try President Johnson upon charges preferred against him and "any attempt to forestall the judgment of that or any other judicial tribunal before the accused is heard in his defense would be indelicate and improper." Upon the reading of this message, Shaw moved that the governor's reasons for not transmitting the resolutions were satisfactory; and a vote was taken resulting in a tie of eighteen to eighteen, which was resolved in the affirmative by the casting vote of the lieutenant-governor. But a motion to reconsider prevailed; and the next day a resolution was adopted by a decisive vote, accepting the reasons given for not transmitting the original resolutions to the president of the United States senate, but requiring the governor to transmit them immediately by telegraph to the speaker of the house of representatives.²

In the assembly political resolutions were quite as plentiful and quite as exaggerated and violent as in the senate. On December 16, 1867, John M. James introduced one to the effect that the ten southern states were governed by the military and ought to be at once restored to the same equal constitutional rights enjoyed by all the other states. On February 20, 1868, John H. Moore

¹ Senate Journal, 1867-8, 143, 239, 676.

² Senate Journal, 1867-8, 461-464, 506-510.

introduced another to the effect that measures were pending before congress for the declared purpose of extinguishing ten states of the Union and establishing in their stead a military dictatorship; that it was intended to complete the scheme of usurpation by the degradation and subjection of the federal judiciary to the arbitrary will of a congressional majority, and that the legislative representatives of California, reflecting the will of the people, pronounced "these acts of usurpation treasonable, flagitious and a crime against the institutions of our fathers." Both these resolutions went to the committee on federal relations, which in the assembly as in the senate was equivalent to giving them their quietus. But on February 25, Asa Ellis introduced into the assembly a fiery manifesto, which was adopted by that body by a vote of thirty-two to eighteen, to the effect that the radical majority in congress were "treasonably attempting to usurp the constitutional functions of the executive and judicial departments of the federal government" and to that end were "endeavoring, in defiance of the laws and traditions of our country, by violence, to remove from office the president of the United States," and therefore recommending him to be firm and unbending in the maintenance of the rights of the executive department and pledging him for that object the undivided support of the people of California. Even this seems to have been not sufficiently virulent for Ellis; and he added another clause to his resolution to the effect that the radical majority in congress had "trampled upon and disregarded the great interests of the people" and, instead of legislating to relieve them of the burdens of taxation under which the entire industry of the country was suffering, were "bending their united efforts to involve the country in the vortex of civil war" and had "proved themselves unworthy alike of the high positions they now occupy and of the confidence of the people." In addition to the adoption of Ellis' resolution and in further exposition of its political position, the assembly refused to adopt and in fact rejected the fourteenth amendment to the constitution of the United States.¹

The principal legislation of the session consisted of the repeal of an act to exclude traitors and alien enemies from the courts of

¹ Assembly Journal, 1867-8, 155, 517, 533-535, 601, 758.

justice in civil cases; the repeal of an act respecting fugitives from labor and slaves brought to this state prior to its admission into the Union; an act to limit the hours of labor to eight hours—the original in California of a line of legislation in reference to labor; an act to authorize the supervisors of San Francisco to modify the grade of Second and other streets or, in other words, to cut through and in effect ruin Rincon Hill as a place of residence without benefiting it as a place of business; an act to confirm “order eight hundred” of the board of supervisors of San Francisco for the settlement and quieting of the title of the outside lands of the pueblo; an act to survey and dispose of the salt marsh and tide lands belonging to the state within the city and county of San Francisco; an act for the codification of the laws of the state—the first of a series which ended in the adoption of the compilations known as the Californian codes; and, most important of all perhaps, an act to create and organize the University of California.¹

¹Stats. 1867-8, 8, 13, 63, 248, 379, 435, 595, 716.

CHAPTER IV.

HAIGHT (CONTINUED).

THE legislature of 1869-70 met on December 6, 1869, in the new capitol at Sacramento, which had just been completed sufficiently for occupancy. This structure, built chiefly of white Californian granite and resembling in many respects the national capitol at Washington, was and is one of the handsomest edifices in the United States. Its length is two hundred and eighty-two feet; its width about half as much and its height to the top of the dome two hundred and twenty-three feet and to the top of the surmounting golden ball two hundred and forty feet. The corner-stone had been laid in May, 1861, so that it had been nine years under construction and had cost up to that time about a million of dollars. It contained two magnificent chambers—that of the senate being seventy-three by fifty-six feet, that of the assembly seventy-three by seventy-five, each forty-eight feet high, and each having a spacious gallery supported by massive Corinthian columns and being otherwise tastefully ornamented with pilasters and entablatures, which, however, unfortunately interfered with the acoustic qualities of the place. It also contained a chamber for the supreme court, rooms for the state library, offices for the governor and other state officials, and in the center, under the dome, an impressive rotunda, fifty-three and a half feet in diameter, lifting itself one hundred and twenty-five feet from the ground floor and decorated in all the grace and beauty of harmonious colors. The occupation of the building, though not completed, was celebrated by a grand ball, which was held in the senate and assembly chambers on the evening of Wednesday, December 15, 1869, and constituted the first of a series of similar social events given in the capitol, usually in celebration of the inauguration of a new governor. It required several years

more to entirely finish the structure; and its cost altogether amounted to two million six hundred thousand dollars.¹

Both houses of the legislature were strongly Democratic and it therefore did not take long to organize. In the assembly George H. Rogers of San Francisco was chosen speaker. Upon taking his seat, he said he understood the people had sent him there to simplify the registry law; to make verbal as well as written contracts payable in gold coin, unless otherwise specified; to keep from our shores the hordes of Mongolians who were swarming upon us, and to place the seal of condemnation upon the fifteenth amendment to the constitution of the United States, which had been adopted by congress and would in a short time be presented for ratification.² This may have been in several respects an anticipation of the governor's message; but the Democrats felt so triumphant in their recent successes, and so exuberant in their anticipation of future victories, that it seemed next to impossible for any one of them to talk at all except to formulate Democratic doctrine and express dissatisfaction with the Republican administration. Haight himself might have complained that the speaker of the assembly was to some extent interfering with his prerogative of advising what measures would be expedient; but when he, as a new convert to the Democratic party and enemy to the administration, came to express himself, especially on the fifteenth amendment, he went so far beyond Rogers, in what he had to say upon the subject, that he probably thought the old Democratic war-horse had barely touched upon it.

On December 9, 1869, after the houses were organized, Haight presented his message. He spoke of general prosperity, propitious seasons and abundant crops; labor well rewarded; agriculture, commerce and manufactures flourishing; facilities for travel and transportation increased, and the great transcontinental railroad pressed to completion—occasioning heartfelt rejoicing throughout California. He recommended the state board of equalization to be given more effective power to equalize assessments, and expressed himself in decided favor of a consti-

¹ Senate Journal, 1869-70, 5, 35, 54; California Blue Book, 1893, 4.

² Assembly Journal, 1869-70, 9.

tutional amendment making assessors hold by appointment instead of by election. He declared the state land system so framed as to facilitate the acquisition of large bodies of the domain by capitalists and corporations, either as donations or at nominal prices, and thought there should be a change. If a system of drainage of the swamp and overflowed lands for reclamation purposes were adopted, the cost of the work should be assessed upon the lands to be reclaimed and not made a charge against the state. There was no propriety, he insisted, in taxing the people of the coast and mountain counties to reclaim private property in the Sacramento valley. He was in favor of the protection of small birds as a means of destroying noxious insects, and of the stocking of the lakes, rivers and other streams of the state with valuable varieties of fish. He pronounced the condition of the common schools satisfactory and their progress constant. He spoke well of the militia, of the state prison, of the insane asylum, of the deaf, dumb and blind asylum and of the university; and he recommended a continuation of the state geological survey.¹

He said that the legislature at its last session had wisely provided for the sale of the state's title, being the reversionary interest after the previous grants to the city for ninety-nine years, to the tide and marsh lands in the city and county of San Francisco and went on to remark that two sales of portions of such lands had already realized upwards of eight hundred and thirteen thousand dollars, of which two hundred thousand dollars had been appropriated to the university. He thought the remainder of the lands would produce seven hundred and fifty thousand dollars. He next spoke of the state harbor commission and the progress of the sea-wall around the San Francisco water front, which was expected to fulfill all desired objects of its construction; mentioned the abolition of the state reform school at Marysville and the transfer of the boys there to the industrial school at San Francisco, and called attention to the desirability of a thorough and careful revision and codification of the general statutes and the fact that the commission appointed for that purpose by the last legislature had not yet finished its labors.

¹ Senate Journal, 1869-70, 40-50.

Next in order, he took up several statutes that had been passed, giving premiums for the raising of silk cocoons, the planting of mulberry trees, and the manufacture of woolen fabrics. "The principle of paying premiums to any person for engaging in a particular occupation," he said, "is sustained by somewhat the same reasoning which sanctions a protective tariff and is equally vicious and indefensible." "The policy," he continued, "of forcing capital out of one channel into another, either by protective duties or bounties, is rapidly meeting with general disfavor. Such artificial forcing produces no healthy growth and is not within the legitimate province of government. Besides, it degenerates almost always into combinations to plunder the treasury for private benefit. If government will confine itself to its legitimate sphere in the protection of life and property, the business men of the country, whether farmers, merchants or manufacturers, will determine for themselves in what channels their labor and capital can best be employed and to what subjects they can best be applied."¹

His next subject of criticism was an act in favor of the "San Mateo Tanning and Manufacturing Company," by means of which the last legislature had been induced to believe the corporation contemplated the prosecution of the tanning industry and desired a tract of tide land of about seventy-five acres to facilitate its business.² Afterwards it was ascertained that the company had no tannery and was not likely ever to have any; that the land described in the bill really embraced about six thousand acres, extending from the southern boundary of San Francisco several miles southward, and that the purpose for which it was sought was purely private speculation. Fortunately the commissioners appointed under the act by the governor to appraise the land, and who were evidently not the men the schemers expected to secure, valued it at a thousand dollars an acre, which was so near the real market price that there was nothing to be made by the speculation; and the company declined to pay the appraisement. He trusted the act would be repealed and the state protected against such attempted imposi-

¹ Senate Journal, 1869-70, 51-56.

² Stats. 1867-8, 662.

tion; and he suggested that, if the same land were sold by the tide land commissioners and the proceeds invested in federal and state securities, they would constitute a fund whose income would probably pay a deficiency in the expense account of the state prison, support the deaf, dumb and blind and insane asylums and provide any additional amount needed for the support of the university.¹

Next in order he spoke in favor of immigration from the eastern states and Europe of a desirable class of population, such as farmers, mechanics and laborers; and he was of opinion that a moderate expenditure of money to establish immigration agencies would be of service. He was of course opposed to the Chinese and designated their coming as "a stream of filth and prostitution" pouring in from Asia, whose servile competition tended directly to cheapen and degrade labor. At the same time, he went so far as to claim that the people of the state were not disposed to countenance any ill usage of the Chinese or any other class within our borders. And, as to the infamy of excluding Chinese testimony, after pronouncing it in sweeping terms utterly unreliable, he closed his remarks upon the subject with a declaration that his deliberate judgment was in favor of the removal of all barriers to the testimony of any class or race as a measure not simply of justice but of sound policy. In conclusion, he turned his attention to what he called national affairs but was rather partisan politics. "The late election in this state," he said, "resulted in the defeat of the political organization to which we owe the burdens of the protective system, inconvertible paper currency—styled by Mr. Webster 'the greatest of political evils,' military trials and the various attempts to override the federal constitution or change it so as to extinguish its original spirit, subvert the rights of the states and centralize unlimited power in the federal legislature. The Pacific states, it is confidently believed, will be found a unit in favor of free trade, a specie currency, the exclusive right of each state to regulate its domestic concerns and in steadfast opposition to all propositions to destroy the landmarks of the constitution and vest absolute authority in the federal congress. The constitutional party is

¹ Senate Journal, 1869-70, 56.

triumphant here, and its triumph throughout the Union will not be long delayed.”¹

On January 6, 1870, Haight presented to the legislature the proposed fifteenth amendment to the constitution of the United States, declaring that the rights of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color or previous condition of servitude. It had been adopted by over two-thirds of both houses of congress and was to be submitted to the legislatures of all the states, under and by virtue of a provision that when ratified by three-fourths of such legislatures it was to be a part of the constitution. In his message of transmission, Haight took occasion to make a long argument in which he claimed that, as the federal constitution was one of delegated powers, all other powers being reserved to the states, it could not be amended by taking away from the state one of its reserved powers and giving it to the United States. He charged in substance that the proposed amendment was the outcome of political artifice and the nursing of military power. But it was too much in conflict with the genius and traditions of the American people to succeed. “It is not possible,” he exclaimed, “for an oligarchy of politicians, sitting in conclave at Washington, to continue long to exercise military control over the people of remote states in all the arrogance of conscious tyranny, violating that cardinal doctrine of all free government, to-wit: that every people have the absolute and inalienable right to control their own destiny and to form their own political and social institutions.” It would be unjust, he thought, to the mass of the Republican party to suppose that this tyranny had their deliberate sanction. In his opinion, it was condemned by all of those who were not under the dominion of party prejudice and whose judgments were not clouded by the bitterness engendered in the war. But, if it were true that the rank and file of that party or the majority of the people of the northern states were so far misled by their political leaders as to look on with complacency while chains were being placed on their own necks and on those of their southern brethren, we would still owe it to ourselves and to the cause of constitutional

¹ Senate Journal, 1869-70, 56-58.

liberty throughout the world to raise our voices in condemnation and in warning. "In view then," he concluded, "of the want of legal power to bind the people of any state to this so-called amendment and of the pernicious principle which it embodies, as well as in view of the scandalous manner in which the people of the several states have been sought to be defrauded, bribed and coerced into its adoption, I trust it will be formally rejected."¹

In response to this message, William M. Gwin Jr. of Calaveras on the same day introduced into the senate a resolution to the effect that the right to declare what persons should be entitled to vote within the boundries of California belonged to the state; that such right could not be taken away or modified by an amendment to the constitution of the United States; and that, until the state by its own voluntary act surrendered that right, congress had no authority and could not be invested with authority to exercise any such power within the jurisdiction of the state. Subsequently on January 13, when the resolution came up for consideration, Gwin moved to amend by adding to it a clause "that in consideration of the premises and because of the manifest wrong which would be put upon this state and upon the entire country by its adoption, the fifteenth amendment should be rejected." On the other hand, Hager of San Francisco offered a simple joint resolution that the proposed amendment should be disapproved of and rejected by the legislature of California; and this afterwards, on January 27—Gwin's resolution having in the meanwhile been tabled—was adopted in the senate by a vote of twenty-three ayes to eight noes.² In the assembly a resolution had already been almost unanimously adopted, approving the action of Tennessee in rejecting the amendment; and, when Hager's resolution came up on January 28 for concurrence, it was adopted by a vote of fifty-one ayes to eight noes, whereupon Speaker Rogers, in a little speech expressive of extraordinary satisfaction, announced that the fifteenth amendment had been rejected by the people of the sovereign state of California.³ Haight on the same January 28 approved the resolution of rejec-

¹ Senate Journal, 1869-70, 142-152.

² Senate Journal, 1869-70, 155, 183, 184, 215, 245.

³ Assembly Journal, 1869-70, 223, 295, 296.

tion,¹ but by that time twenty-four states had already ratified it; in less than a month afterwards five more did the same, and on March 30, 1870, it was proclaimed a part of the national constitution and as such binding upon all the states.

The strongly Democratic character of the senate at this session, which was more marked even than that of the previous session, presented a favorable opportunity for the friends of James H. Hardy, who had been impeached and removed from his office of district judge of the sixteenth judicial district of the state by the senate of 1862, to move to expunge the judgment against him from the journal. A resolution to that effect was offered by Augustus Compte. It recited the facts of the impeachment; set forth that the conviction was for "seditious and treasonable language" against the constitution and government of the United States, and claimed that such an accusation was unknown to our criminal jurisprudence and the power to punish it not reposed in the legislative or judicial organization of a state. It insisted that the senate of 1862, in assuming jurisdiction to try, convict and punish for such alleged high crimes and misdemeanors against the government of the United States, exceeded its legal authority invaded the rights and privileges of the citizen and placed before the country a dangerous precedent. It expressed an opinion that the impeachment of Hardy was superinduced by a spirit of partisan rancor and unhealthy excitement in the popular mind and that justice demanded, and the safety of the citizen required, that all evidences of such past vindictive legislation should, as far as possible, be effaced—to the end that the safeguards of the constitution and laws might remain intact and our form of government be preserved. It therefore declared that the judgment had been entered without authority of law; that it was illegal and void; that it ought to be expunged from the journal, and that on January 8, 1870, the secretary should bring the journal of 1862 into the presence of the senate and, then and there in open session, draw dark lines around such judgment and write across the face thereof the words "Expunged by order of the senate of the state of California this eighth day of January, eighteen hundred and seventy."²

¹Stats. 1869-70, 913.

²Senate Journal, 1869-70, 90-92.

Upon reference to the judiciary committee, a report was made by the majority, and signed by Hager as chairman, to the effect that the desired object would be more appropriately attained by an act regularly passed than by resolution; and it reported a bill for the purpose, giving an abstract of Compté's resolution by way of preamble, declaring the judgment against Hardy annulled and directing the secretary of state within ten days after the passage of the act to write upon each page of the journal containing any of the proceedings in the impeachment trial the words "Expunged by authority of an act of the legislature." On January 26, just before the bill came up for engrossment, Edward Tompkins of Alameda, as a member of the judiciary committee, made a minority report, taking strong ground against the bill and recommending that it should not pass. After calling attention to the fact that, though the specifications against Hardy had been presented, none of the testimony had been brought forward, he said that the legal presumption was that the charges had been fully proved. As a matter of fact they were not denied—it being claimed that the specifications did not import a crime of which the accused could be convicted. He had, however, been convicted and removed from office. In that decision he had acquiesced without making any effort to test its legality, and for more than seven years it had remained unquestioned upon the records. The senate was now asked in its legislative capacity to go back to the records of the high court of impeachment and deface and obliterate them.¹

"The judgment," continued Tompkins, "was rendered by the court for the trial of impeachments and not by either branch of the legislature. That court was organized under the constitution and in obedience to law; and, if the legislature can expunge one of its decisions or cancel one of its records, it can expunge all decisions and cancel all records of every court in the state. The fact that senators can, in the cases provided by law, become judges of that court in no degree clothes them with power to act as such when not sitting as such court. No member of this senate has ever been sworn as such judge and no judge has a right to act until he has taken the oath of office. The senate has no power over the records of the court; and to attempt to exer-

¹ Senate Journal, 1869-70, 186, 237, 238.

cise such power without legal right would be to weaken all respect for law and to throw discredit upon its administration in our state." He further said that the passage of the bill would be in effect "to declare to the people of the state, as the opinion of this legislature, that for a judge, sworn to uphold the constitution, to publicly denounce and deride that constitution and to declare himself an enemy to the government whose laws he was professing to execute, did not disqualify him for his high position or justify his expulsion from the bench." He then pointed out that the bill, which objected to the judgment on the ground that it was influenced by a spirit of partisan feeling, relied entirely upon partisan feeling for its passage. It furnished the example and held out the inducement to the next legislature, whose partisan feelings should be differently directed, to expunge the expunging act and thus render the decisions of our highest tribunal the shuttlecock to be thrown back and forth by the fluctuating fortune of political strife. It assumed to reverse a judgment without having before it or in any manner examining the evidence upon which it was rendered. It revived old animosities and called back old issues then passing away, which the public good required should be undisturbed and forgotten. It would deface and obliterate a record—an act of itself in gross violation of the criminal law, which if committed by a private citizen might consign him to the penitentiary for ten years. Ought not those, who order, aid or abet a crime, to share in the punishment that follows its commission?" This powerful reasoning, however, was in vain. The bill passed the senate by eighteen ayes to eleven noes, the assembly by fifty-one ayes to five noes, and was approved by the governor on February 16, 1870.¹

There was another remarkable instance in which strict construction did not seem to have any commanding influence upon the law-makers of this session. On February 1, 1870, Hager introduced into the senate a bill to aid the Mercantile Library of San Francisco to pay its indebtedness. That institution, one of the most deserving and popular in the state, had by bad management of its officers become heavily indebted and was threatened

¹ Senate Journal, 1869-70, 238, 239, 259; Assembly Journal, 1869-70, 326; Stats. 1869-70, 77.

with destruction. To raise money to pay off the indebtedness and give the association a new start, a plan was concocted and formulated in the bill, authorizing "three public entertainments or concerts at which or by means of which personal property, real estate, demands, things in action or other valuables may lawfully be disposed of by chance, raffle or other scheme of like character, anything in the laws of this state to the contrary notwithstanding." It was plainly in violation of the constitutional inhibition against lotteries; but this made no difference; the judiciary committee with Hager as chairman reported favorably, and it passed the senate without difficulty. In the assembly it was at first defeated by forty-five noes to twenty-one ayes; but on reconsideration it triumphantly passed; and on February 19, 1870, the governor approved it.¹ The result was three crowded concerts the following summer in the immense pavilion built by the Mechanics' Institute on Union Square in San Francisco for the purpose of holding their expositions. At these concerts, and apparently the most popular, attractive and absorbing parts of their programmes, were the regular drawings of prizes, which were conducted in what appeared to be the most approved lottery fashion. There was a regular three days' carnival of gambling under the auspices of the governor and legislature, into which nearly all the population, including the school-children, were insidiously drawn, and at which half a million of dollars was made. And, as if to perpetuate the recollection of it and its sinister success, the large glass structures from which the prize numbers had been drawn were afterwards used for gas lights in front of the redeemed Mercantile Library building.

But, though the last-mentioned bill may have been bad, the legislature of 1869-70 passed another bill of the highest importance and benefit to San Francisco. This was to expedite the settlement of the titles to what were known as the "outside lands." It was a substitute, introduced into the senate by the San Francisco delegation, in place of an earlier bill relating to the same subject which did not cover the ground, and was approved on March 14, 1870. This act did for the "outside lands," includ-

¹ Senate Journal, 1869-70, 264, 287, 337; Assembly Journal, 1869-70, 394, 442; Stats. 1869-70, 70, 90.



ing all the undisposed-of portions of the pueblo of San Francisco, by dividing them among the actual, bona-fide possessors, what the so-called Van Ness ordinance act, heretofore mentioned, did for the lands within the charter limits of the old city and particularly the Western Addition. But it did it much more completely and satisfactorily, by making reservations for the magnificent Golden Gate Park of a thousand acres, which has since become the glory and pride of the metropolis, and other spacious public places; levying an assessment on the remaining disposable lands to pay for them, and providing for the issuance of deeds by the city and county to those found to be entitled. On account of these deeds, thus provided for, the titles to the outside lands were much more rapidly settled than those to the Van Ness lands and with much less litigation—for the reason that the city and county deed was *prima-facie* evidence of title and its production in ordinary cases decisive; while under the Van Ness ordinance actual and continued possession from January 1 to June 20, 1855, had to be affirmatively proved in each case. The effect was in a few years to render land titles in the city and county of San Francisco, which in the early days had been so questionable and over which so many battles had been fought, as certain and secure as they can be anywhere.¹

On January 10, 1870, Charles A. Tweed of Placer introduced into the senate a resolution requesting the several state officers to give employment in their respective departments to women wherever it might be practicable and without detriment to the public service, and that like compensation should be paid for such services as was allowed to men. An attempt to lay it on the table was lost by a vote of eleven ayes to twenty-five noes, and a motion to indefinitely postpone it by a vote of seventeen ayes to nineteen noes; but the next day it was rejected by a vote of fifteen ayes to twenty-one noes.² In the same house, on March 2, 1870, Tweed presented a petition from Mrs. L. E. Cole and thirty-one hundred others, asking an amendment of the constitution granting to women the right of suffrage. In response, a special committee of five, with Tweed as chairman, was appointed

¹ Senate Journal, 1869-70, 134, 299, 535, 561, 571; Stats. 1869-70, 353.

² Senate Journal, 1869-70, 165, 170.

on the subject; and a like committee, with Seldon J. Finney of San Mateo as chairman, was appointed in the assembly. The last-mentioned committee reported such an amendment to the constitution as was desired; but it was refused engrossment by a vote of twenty-three ayes to forty-seven noes.¹ It was thus that the subject of women's suffrage, which has to a greater or less extent occupied the attention of every legislature since, was brought prominently forward as a public question.

It was at this session of the legislature that the first act was passed for the destruction of burrowing squirrels and gophers. It provided for the levy of a tax and the payment of a bounty of five cents for every squirrel and ten cents for every gopher destroyed in Alameda, Contra Costa and certain other counties. Like most other legislation of the same general character, it was essentially ill-advised and vicious; but it took a number of years to get rid of it. First it was repealed as to one of the counties named, then as to another; then the bounty part of it was repealed as to one county; then another act was passed somewhat different in character; again, there were a number of repeals, and in the end it became so evident that the plan of getting rid of squirrels and gophers by special legislation not only cost a great many times more than it was worth, but the annoyances caused by inspectors and tax collectors were even greater than the costs.² At the same session, a bill was passed to appropriate to General John A. Sutter, the pioneer of 1839 and founder of New Helvetia, once the richest and most powerful foreigner in the country but by that time reduced to poverty, a sum of two hundred and fifty dollars per month. It was approved on the last day of the session. A like bill was passed to appropriate a similar sum to James W. Marshall, the discoverer of gold, who was also then reduced to poverty; but the governor for some unavowed reason, though he did not veto the bill, accomplished the same purpose by refusing to approve it.³

Haight was more prompt in approving a somewhat remarkable

¹ Senate Journal, 1869-70, 425, 439; Assembly Journal, 1869-70, 70, 698, 728.

² Stats. 1869-70, 316; Hittell's Codes and Statutes, 15875.

³ Assembly Journal, 1869-70, 518, 519; Senate Journal, 1869-70, 628; Stats. 1869-70, 762.

piece of legislation, apparently brought forward by the friends of the old Democratic governor, John Bigler. It was called an act to legalize the name of Lake Bigler, under which Lake Tahoe, the magnificent sheet of water on the summit of the Sierra Nevada in Placer and El Dorado counties, had been sometimes and in the days of Bigler's administration very generally known. In 1861, while Downey was governor, there was an attempt in the assembly to change the name from that of Bigler to the fanciful one of Tula Tulia, but it failed;¹ and the old name remained. There was, however, no good reason, on account of anything that Bigler had ever done, why the lake should be named after him; and people by degrees began to call it by its more beautiful and appropriate Indian name of Tahoe. Under the circumstances, W. A. King of Nevada seems to have imagined that he ought to stop this apparent disrespect to the old governor; and on January 24, 1870, he introduced into the assembly a bill declaring that Lake Bigler should be "the official name of the said lake and the only name to be regarded as legal in official documents, deeds, conveyances, leases and other instruments of writing to be placed on state or county records or used in reports made by state, county or municipal officers." The bill, which appears to have been well modulated to the taste and feelings of the legislature, went through with great success. It passed the assembly on February 1, the senate on February 7; and on February 10 it was approved by the governor. It remains a monument, if not to Bigler, at least to the legislature that passed it; while the name of the lake will doubtless continue to be Tahoe and its sometime former designation of Bigler be forgotten.²

T. J. Moynihan, a member of the assembly from San Francisco, made himself somewhat prominent at this session by professing to have been offered a bribe. On March 3, 1870, in the course of a discussion on and concerning the repeal of the San Mateo Tanning and Manufacturing Company act, before mentioned, Moynihan said he had been approached by parties with

¹ Assembly Journal, 1861, 700, 904.

² Assembly Journal, 1869-70, 311; Senate Journal, 1869-70, 296; Stats. 1869-70, 64.

the offer of a valuable consideration to oppose such repeal. E. A. Rockwell of San Francisco and several other assemblymen denounced his charge as false and demanded an investigation. A committee was accordingly appointed with Rockwell as chairman. Before this committee, Moynihan presented himself with Assemblyman George R. B. Hayes, whom he desired to appear as his counsel. The committee decided that Moynihan, being a witness and not himself on trial, had no right to counsel. Upon this he positively refused to give any testimony; and the only evidence adduced was a certificate of stock of the San Mateo Tanning and Manufacturing Company, which he had said had been given him to influence his vote. Subsequently Rockwell resigned and J. C. Crigler of Lake and Napa was appointed chairman of the committee. Moynihan, being again called before the committee, made his appearance and gave some testimony but threw little or no light upon the subject of his charge. He said one Morton had given him the stock; but he could not describe or furnish any information about Morton; and, after the most diligent search and inquiry, no one could be found who had ever seen or heard of such a person as Morton, except Moynihan himself. On this state of the case, the committee, which seems to have acted under the advice of Assemblyman Joseph Naphtaly as "counsel for committee," reported that there had been no attempt to "unduly influence any person with reference to the vote or action of any member of the legislature." This was supposed to mean that Moynihan's story was a fiction made out of whole cloth; and with this the subject dropped.¹

At the previous session Haight seemed to be in more substantial accord with the two houses than at the last one. At the former, he had sent in eight or ten vetoes and they were generally acquiesced in, but at the latter, where the number was about the same, there was some opposition. In the assembly three or four of his vetoes were overruled; and in one important case, in reference to directing the payment of certain street contractors' bills in San Francisco, the senate followed suit, and the act was passed by the constitutional majority required to make it a law.²

¹ Assembly Journal, 1869-70, 530, 548, 552, 698.

² Stats. 1869-70, 309.

In a number of instances, when he did not want to sign a bill and still was unwilling to veto it, he allowed it to become a law by holding it more than ten days while the legislature remained in session; and thus, to some extent, he avoided doing what he did not want to do. He was the first to take much advantage of this constitutional right.¹

Among his vetoes were two of senate bills to empower various counties to aid, by large contributions, in the construction of certain railroads. He said that it seemed "to be thought by some, that any measure to burden a community with taxation for the direct benefit of a railroad corporation can be sanctified, if it goes through the process of a popular vote. Is this so? Have men any right to encumber their neighbors' property for a third or fourth of its value in order to build a railroad? If one-half of the community can in effect mortgage the property of the other half for a third or a fourth of its value, without the consent of the owners, for some purpose wholly foreign to the ordinary functions of government, it is clear that property is held by a much more frail tenure than we have been in the habit of supposing." He further said that all the railroads we need will be built by private enterprise, without loading the state with an incubus of debt, crippling its finances for half a century, and furnishing a prolific source of corruption. "The policy of county aid," he continued, "is far more liable to abuse and more dangerous than state aid; and, while I regret to differ on this subject from gentlemen for whose integrity and judgment I entertain great respect, I am content, for the justice and soundness of the views above expressed, to abide by the developments of the future." And the senate seemed to take very much the same view or at least refused to pass the bills over the veto.² And yet, with what would appear to be strange inconsistency, the same legislature passed and Haight on April 4, 1870, a few days after the above veto, approved an act, which became known and attracted much adverse criticism as the "five per cent subsidy law." This act empowered San Francisco or any other county in the state, if its electors so voted, to aid railroads to the extent

¹ Stats. 1869-70, 301-303, 308, 406-408.

² Senate Journal, 1869-70, 680-684, 696, 711.

of five per cent of its taxable property. To all appearance there was a difference in the policy of subsidies according to the amount of them.¹

The legislature of 1869-70, after a session of one hundred and twenty days, closed at midnight on Monday, April 4, 1870. There was in the senate before the gavel fell, in accordance with a custom of exceeding ill-taste, not uniform and much more honored in the breach than in the observance, a presentation of plate or something of that kind to the president and some of the officers. In the assembly, there was a remarkable valedictory by the speaker, George H. Rogers, who as he had commenced the session with condemning the fifteenth amendment to the constitution of the United States also closed it with condemnation still more pronounced and evincing what was usually known as an "unreconstructed disposition." After a few words of introduction about what had been accomplished by the session, he came to his main subject. "We have sent on our protest against the so-called fifteenth amendment," he exclaimed, "but, despite our efforts, it has been promulgated as a part of the supreme law of the land. I do not look upon this as an amendment to the constitution, but as a radical change in the constitution itself. Many of the states which have given their consent to this measure have been forced to do so by congress at the point of the bayonet—a power used and a consent given which was not contemplated by the constitution which our fathers made. It remains to be seen what effect this change in our form of government will have upon our people. Free and independent states were never created for such a purpose as this; and, when the centralized government absorbs all the rights which the states now possess, then will our liberties end or a new struggle begin."²

While the legislature of 1869-70 was thus busying itself with its vain fight against the fifteenth amendment and its opposition to almost everything that had been done by the United States for the preservation of the Union, the federal government was preparing a very interesting spectacle for the people of the state. This was the blowing up of Blossom rock in the harbor of San

¹ Stats. 1869-70, 746.

² Assembly Journal, 1869-70, 947, 948.

Francisco. The so-called rock, which derived its name from the British ship Blossom that visited San Francisco in 1826, consisted of an isolated submerged mass of hard sand-stone situated nearly in a line between Yerba Buena and Alcatraz Islands and about three-quarters of a mile northeast from the northeasterly extremity of Telegraph Hill. Being only about five feet below the water level at low tide, it presented a very serious obstruction to navigation, and a number of vessels had from time to time been injured by incautiously getting too near it. A buoy had at an early period been anchored there; but this afforded inadequate protection; and the government, as soon after the civil war as it could turn its attention to the subject, determined to remove so much of the obstructing body as would allow vessels of twenty-four feet draft to pass safely at mean low water. It accordingly contracted with Alexis W. Von Schmidt, a skillful civil engineer of San Francisco and the same person who in 1867 had excavated in the solid rock of Hunters' Point in the southern portion of the city one of the largest and finest dry docks in the world, to undertake the job—he binding himself to remove enough of the mass to make a depth of at least twenty-four feet at mean low water, and the government agreeing to pay him seventy-five thousand dollars when he had accomplished the task.

Von Schmidt immediately went to work by sinking a hollow metal cylinder six feet in diameter upon the rock, surrounded with a coffer-dam and outworks to protect it from the waves and so constructed and fitted upon the mass as to allow it to be pumped dry and kept water-tight. He then sunk a shaft of the same diameter down into the rock and excavated galleries for a distance, counting from end to end, of one hundred and forty feet in one direction and forty in the other transversely, and at a depth of about thirty feet below low tide. This part of the work having been completed, he placed twenty-three tons of black blasting powder in the drifts, so arranged that they could all be exploded at the same moment by an electric wire. When everything was ready, public notice of the spectacle having been given in the newspapers, Von Schmidt on May 23, 1870, in the presence of an immense concourse of people covering the hills and wharves and vessels and in fact almost every point from which

a view could be obtained, touched the button of his battery and sent the spark into the explosives. In an instant a column of water several hundred feet in diameter, carrying fragments of stone and pieces of timber used in the galleries and other constructions and accompanied by dense masses of smoke, was thrown into the air—the central portion of it at least a hundred and fifty feet—and presented a sight rarely ever witnessed and the like of which had never before been seen on the Pacific coast. The plan of blasting thus adopted proved entirely successful. Upon subsequent examination, after the easy removal of a few loose stones with an immense and powerful rake constructed for the purpose, the required depth of water was secured. Blossom rock as a dangerous obstruction to the ordinary commerce of San Francisco and California no longer existed; and the engineer in due course of time received the reward of his skill in the thanks of an appreciative people and the money of a well-pleased government.¹

At the next general election, as will be shown more specifically hereafter, Haight ran again for governor but was defeated by Newton Booth. He had still to serve until the inauguration of his successor by the legislature of 1871–2; and it was his duty upon the organization of that legislature to transmit to it his second biennial message. This he did on December 7, 1871; and it proved to be his farewell to political office. In it, he remarked that there had been too little rain for two seasons, though he considered the future promising. He spoke of the state finances as being in reasonably good condition, and said that a fair start had been made in the equalization of assessments throughout the state. He thought Yosemite Valley as a place of public resort should be preserved and sustained; spoke of the fact, reported by the attorney-general, that James M. Hutchings, a settler in the valley, had been defeated in the suit against him by the state, and recommended that Hutchings and other settlers should be paid a liberal compensation for their improvements.²

He next called attention to the censurable course pursued by

¹ San Francisco newspapers of May 24, 1870; statement of Alexis W. Von Schmidt.

² Senate Journal, 1871–2, 35–38.

United States government officers of Mare Island at Vallejo, in the recent election, by compelling men employed there to vote a particular ticket, without the chance of scratching it, by threats of discharge and other means of coercion. It appeared that these officers, with an originality deserving of a better cause, had succeeded in preparing a Republican ticket, closely printed in diamond type on pieces of pasteboard five-eighths of an inch wide—so small that it was impossible to write any other names on, or in any way alter it. With tickets such as this placed in their hands, fourteen or fifteen hundred laborers were marshaled to the polls and watched while they voted, with a certainty on the part of the scurvy manipulators that so far as they were concerned at least there were no scratched tickets thrown. There was nothing in the law at the time to prevent such fraud; and the governor properly recommended that a repetition of the abuse should be prevented by the necessary legislation. A few specimens of this so-called "Mare Island election ticket" still remain as curiosities and are to be found in museums. He also took occasion to repeat what he had said before in opposition to grants of public lands to railroads, and instanced as an object-lesson the fact that a body of public land, comprising over fifty millions of acres and embracing nearly the whole of what was then Washington territory, destined one day to become a great state, had been granted to a corporation composed of a few capitalists. He added that the public lands belonged to the people and that it was not improbable that such legislation, if no other remedy should avail, might in the future provoke revolutionary resistance on their part against being thus defrauded of their rightful patrimony.¹

He expressed himself against the killing of small birds and especially singing birds, which he pronounced of great importance to agriculture, and in favor of the repeal of what was known as the system of "lawful fences." He maintained that every man ought to be compelled to take care of his own stock or suffer the consequences. It was manifestly unjust to compel every farmer, who purchased or took up a quarter section, to expend more than the price of his land to protect himself against his neighbor's

¹ Senate Journal, 1871-2, 39, 40.

cattle. The fence system, he said, had been an incubus upon agriculture and was becoming each year more and more intolerable. He took occasion again to recommend fish culture and said that an experiment, which had just been made in stocking the upper Sacramento with shad, promised good results. After next touching upon the common schools, the militia and the state prison, he spoke of the asylums for the insane and for the deaf, dumb and blind and said: "It is a source of gratification to know that the polluting influence of party politics has not invaded the charities of the state during the past four years. If the prison could be rescued from this influence also, and these institutions could be kept free from this contamination, there would be a great gain to the cause of humanity as well as to the public revenues." After next reviewing the progress of the state harbor commissioners in the construction of the San Francisco sea-wall, what had been done in the disposition of the state tide lands in San Francisco bay, the promising success of the state university and recent work by the state geological survey, he spoke of the great improvement over the original plan of the state capitol accomplished by omitting the steps which were to have ascended in front of the building to the second story. He said that the cost up to that time had been about two millions of dollars and estimated what would still be required as about a quarter of a million—which figure he should have raised to upwards of half a million, as has been already stated. In speaking of the executive mansion, which never became a mansion, he said that a quarter of a million had been appropriated for it, of which about one-third had been expended and about one-sixth more was necessary to protect it from the weather.¹

In continuation of his review, he said that the code commission, appointed under an act of the last session, had not yet completed their labor. He was however favorably impressed with what they had done. They had arranged the statute law into four codes—a penal code, a code of civil procedure, a civil code, all of which were finished, and a political code, which would soon be ready. For the civil code they had adopted in substance a

¹ Senate Journal, 1871-2, 40-50.

code which had been prepared for New York, and for the other codes they had arranged in order the already existing statutory law of the state. He added that, in addition to the original commission, he and his successor in office had engaged two members of the bar of known qualifications to revise the work; and he trusted that the step would be sanctioned and a proper compensation paid the revisers. He gave a parting broadside against railroad subsidies; mentioned the fact that until very recently subsidy laws had been generally acquiesced in; said he had himself paid little or no attention to the subject, and added that the more he had reflected upon the questions involved the stronger had become his conviction that the subsidy legislation was not authorized by the constitution and that, whether unconstitutional or not, it ought to be stopped. And as a final shot at the railroad, he recommended the repeal of the so-called five per cent subsidy act, which had been passed at the last session of the legislature and received his approval on April 4, 1870, empowering the supervisors of each of the counties of the state to aid in the construction of railroads to the extent of five per cent of the assessed value of its property, as already stated.¹ And he closed this part of his message by stating that the current railroad charges in the state, being a maximum of ten cents per mile for fares and fifteen cents per ton per mile for freight, were so excessive that they were never charged or collected, and that there should be a reduction.²

In conclusion he recommended a new apportionment of the state in such manner that the minority in a county might have an opportunity of securing some representation. As to appointments to office, he thought the public interests would best be subserved by giving the filling of city offices to the mayor and those of the state to the governor, with the power in each of removal. He was of opinion that a board of public works would be of advantage to San Francisco, to take charge, among other things, of all the various departments then in the hands of commissioners. He commended the work of the state board of health. He deemed the labor done by the California Immigrant

¹ Stats. 1869-70, 744, 746; see Hittell's Codes and Statutes, 15722.

² Senate Journal, 1871-2, 50-52.

Union, a private corporation of public-spirited citizens, as most important, and recommended the subject of immigration of a farming population from the eastern states and Europe to the favorable consideration of the legislature—omitting however to say anything on the engrossing subject of the Chinese, which formed a part of every other message and every platform for years before and after. He regarded the calling of a constitutional convention as desirable and recommended that steps should be taken to that end. With a final review of what he considered the results of his administration and with an apparent effort to close with a characteristic sentiment, he hoped that the people of the state might progress in intelligence and morality and that a good Providence might inspire them with that love of public virtue, which was, “after religion, the brightest ornament of the mind of man.”¹

¹ Senate Journal, 1871-2, 52-55.

CHAPTER V.

PACIFIC RAILROADS.

IT was in 1869 that the first transcontinental railway, connecting California with the Atlantic states, was completed. This connection had for many years been a subject of great public interest in the United States, and various projects were from time to time presented. In 1835 one Hartwell Carver proposed to congress a railroad from Lake Michigan to the South Pass of the Rocky mountains and thence to the mouth of the Columbia river, with a branch to the bay of San Francisco. His idea was to obtain an exclusive charter for his road, also the grant of a strip of ground sufficient for road-bed and construction purposes, and likewise the pre-emption right to purchase eight million selected acres of the public lands at the rate of one dollar and a quarter per acre—paying for them in stock of the company as the road progressed. But as it was plain that the government could not or at least would not enter into a stock-jobbing operation, such as the plan contemplated, it met with no success. Another project was that of John Plumbe who in 1838, and for a few years before and after, advocated a somewhat similar road and asked for an immediate survey and location of the first link or section from Lake Michigan to the Mississippi river. His plan was to obtain a grant of alternate sections of public land on each side of the road sufficient to build it, and to form a company, embracing everybody who might choose to join, with a capital stock of twenty million shares of the value of five dollars each. But this project, like Carver's, was impracticable and, to use the expression of the day, "failed to materialize." Still another scheme was presented in 1846 by Asa Whitney, who proposed a road from Lake Michigan to Puget Sound; and for that purpose he asked of congress a strip of land sixty miles wide along its whole length,

being a tract containing upwards of ninety-two millions of acres. But the sufficient answer to this project was, that it would create a dangerous monopoly and become a standing menace to the government.¹

On February 7, 1849, Thomas H Benton introduced into the United States senate a bill for what he called a Central National road from St. Louis to San Francisco, with a branch from some point west of the Rocky mountains to the mouth of the Columbia river. His road was to consist of an iron railway wherever practicable and in other places of a macadamized or otherwise well-constructed passage way; but throughout the entire distance there was to be, under any and all circumstances, a track one hundred feet wide, free of toll or charge, for the use of wheeled carriages, horse and foot travelers. For its construction, he proposed the grant of a strip of land one mile wide between the termini, and the setting apart and pledging of three-fourths of the proceeds of the public lands in California and Oregon and one-half the sales of other public lands in the United States until the work should be completed and paid for. In presenting this project, he seems to have been endeavoring to forward the interests of his son-in-law, John C. Fremont, whose praises he sounded with loud reiteration. In speaking of a route, he advocated an almost direct line between St. Louis and San Francisco and asserted that Fremont had discovered a practicable way on that parallel of latitude—at the same time pronouncing the South Pass entirely too far north. In this, as in some other instances, he either misunderstood or was misled by Fremont, as very clearly appeared upon further investigation.²

Without attempting to follow out in detail all the discussions and proceedings in and out of congress and in railroad conventions in various places, which about this time began to be held, it may suffice to say that the great overland emigration of 1849 demonstrated very effectually the impracticability of Fremont's intended route and that it became plain, from the experience of the emigrants, that the easiest grades and greatest advantages lay in the route along the Platte river, by Fort Laramie and South

¹ Con. Globe, 1 Sess. 29 Con. 1845-6, 414, 1171.

² Con. Globe, 2 Sess. 30 Con. 1848-9, 470-474.

Pass, and thence by Salt Lake, along the Humboldt and Truckee rivers, and over the Sierra Nevada by Donner Pass. This was the main traveled road, and any great deviations from it were found to be unfortunate. But it was well known that there were other passes in the Sierra besides Donner; and for the purposes of an expensive railroad, which could not fail to become a highway of nations, it was important that all routes at all likely to be practicable should be surveyed and examined. With this purpose in view, the California legislature at its first session may be said to have taken the initiative by the adoption on March 11, 1850, of a joint resolution, introduced into the assembly by John Bigler, instructing the United States senators and requesting the representatives to urge upon congress the importance of authorizing as soon as practicable the construction of a national railroad from the Pacific Ocean to the Mississippi river. A second resolution urged upon the national government, with a view to facilitate the accomplishment of the great work contemplated, the immediate organization of an efficient engineer corps to make complete surveys and explorations of the several routes, that had been recommended to public notice as practicable, for the line of such road.¹

On December 16, 1850, Benton re-introduced into congress his bill for a great national highway, but in a somewhat different shape from the original scheme. He now proposed the grant of a strip of land one hundred miles wide from Missouri to San Francisco for a main line and a strip fifty miles wide for branch lines, together with the net revenue from lands and customs of California, Oregon, New Mexico and Utah, sufficient to build the road. As to the route, he was not quite so positive as he had been before and did not mention Fremont in connection with it; but he still was of opinion that a nearly straight line between St. Louis and San Francisco was the most direct, the easiest of grade and the most practicable. In his remarks, in reply to an intimation that only men of science could lay out a railroad and that they did not favor his route, he exclaimed, "There is a class of topographical engineers older than the schools and more

¹Journals of Legislature, 1850, 774, 995; Stats. 1850, 465.

unerring than the mathematics. They are the wild animals—buffalo, elk, deer, antelope, bears—which traverse the forests, not by compass but by an instinct which leads them always the right way to the lowest passes in the mountains, the shallowest fords in the rivers, the richest pastures in the forests, the best salt springs, and the shortest practicable lines between remote points. They travel thousands of miles, have their annual migrations backwards and forwards and never miss the best and shortest route. They are the first engineers to lay out a road in a new country; the Indians follow them; and hence a buffalo road becomes a war-path. The first white hunters follow the same trails in pursuing their game; and after that the buffalo road becomes the wagon road of the white man, and finally the macadamized or railroad of the scientific man.”¹

Benton's project, so far as its proposed route was concerned, was probably intended as a sort of compromise between the conflicting northern and southern interests. The southern politicians, on account of its expected influence upon their pet institution of slavery, were opposed to any road, and particularly any road in a northern latitude; but Benton appears to have thought they might be reconciled by a route south of Mason and Dixon's line, and that the north would consent to almost any route to secure a road. It is doubtful, however, even if the proposed road had been practicable, whether there would have been any conciliation between the warring factions. On the contrary, it is likely, if the secession struggle had been postponed and there had been no elimination of the slavery influence from the councils at Washington, that the building of any transcontinental road would have been deferred for many years. Nevertheless, under any circumstances, there could be no great objection to gaining information upon all subjects relating to a matter of such general interest and importance to the country; and for this reason, when the Californian resolutions for surveys and explorations were presented to congress by Senator Gwin on December 30, 1850, they met with favorable consideration and eventually led to the magnificent series of railroad surveys and reports, conducted under the authority of acts of congress passed in 1853

¹ *Con. Globe*, 2 Sess. 31 *Con.* 1850-1, 56-58.

and published by the United States government a year or two later.¹

Meanwhile, on August 4, 1852, congress passed an act granting a right of way one hundred feet wide in ordinary cases, and two hundred feet where deep excavations or heavy embankments were required, over any public lands of the United States for any railroad, plank road or macadamized turnpike then or within ten years thereafter chartered; and on March 3, 1855, its provisions were extended over the territories.² This latter act, and the publication of the reports above referred to, tended to keep the subject alive; and, though to a very great extent public attention was monopolized by the slavery question, a new railroad bill was introduced, providing for a grant to any person or company that would build the contemplated road of the alternate odd sections within twenty miles on each side of the line selected. To this Gwin, who appears to have been at heart adverse to any road but took his own mode of manifesting his opposition, offered an amendment or substitute providing for three roads—one from Texas to be called the Southern Pacific, one from Missouri or Iowa to be called the Central Pacific, and one from Wisconsin to be called the Northern Pacific. Gwin's substitute passed the senate but failed in the house of representatives, as was probably expected, as did also several other bills introduced in the course of the next few years—there being a decided opposition to any feasible project on the part of southern members.³

During all this time California was urgent for something to be done. On May 1, 1852, the legislature passed an act granting the right of way to the United States for the construction of a road connecting the oceans.⁴ In 1853, Governor Bigler in his message said that few questioned the feasibility of the road and all conceded the incalculable benefits that would be derived from its construction. In the senate of that year, the committee on federal relations reported that no question of public policy had engrossed a greater degree of popular attention; that it had been

¹ *Con. Globe*, 2 Sess. 31 *Con.* 1850-1, 132; 10 *U. S. Stats. at Large*, 217, 579.

² 10 *U. S. Stats. at Large*, 28, 683.

³ *Con. Globe*, 2 Sess. 33 *Con.* 1854-5, 805-814; 1 Sess. 34 *Con.* 1855-6, 1720-1726.

⁴ *Stats.* 1852, 150.

cattle. The fence system, he said, had been an incubus upon agriculture and was becoming each year more and more intolerable. He took occasion again to recommend fish culture and said that an experiment, which had just been made in stocking the upper Sacramento with shad, promised good results. After next touching upon the common schools, the militia and the state prison, he spoke of the asylums for the insane and for the deaf, dumb and blind and said: "It is a source of gratification to know that the polluting influence of party politics has not invaded the charities of the state during the past four years. If the prison could be rescued from this influence also, and these institutions could be kept free from this contamination, there would be a great gain to the cause of humanity as well as to the public revenues." After next reviewing the progress of the state harbor commissioners in the construction of the San Francisco sea-wall, what had been done in the disposition of the state tide lands in San Francisco bay, the promising success of the state university and recent work by the state geological survey, he spoke of the great improvement over the original plan of the state capitol accomplished by omitting the steps which were to have ascended in front of the building to the second story. He said that the cost up to that time had been about two millions of dollars and estimated what would still be required as about a quarter of a million—which figure he should have raised to upwards of half a million, as has been already stated. In speaking of the executive mansion, which never became a mansion; he said that a quarter of a million had been appropriated for it, of which about one-third had been expended and about one-sixth more was necessary to protect it from the weather.¹

In continuation of his review, he said that the code commission, appointed under an act of the last session, had not yet completed their labor. He was however favorably impressed with what they had done. They had arranged the statute law into four codes—a penal code, a code of civil procedure, a civil code, all of which were finished, and a political code, which would soon be ready. For the civil code they had adopted in substance a

¹Senate Journal, 1871-2, 40-50.

Valley railroad, which ran from Sacramento to Folsom. The original project appears to have been to run from Sacramento along the American river to the foot-hills of the Sierra Nevada and thence northward to Yuba county, apparently with the idea of supplying the Northern Mines. The legislature had provided a general law for the organization of railroad companies in 1850, which was superseded by a new act in 1851. The latter was amended in 1852 and superseded by another new act in 1853.¹ Under the last mentioned act, the Sacramento Valley Railroad Company, which had already been formed, was reorganized and a start, which proved very important for California, was made for the construction of the road. This start consisted principally in the engagement in the eastern states of a young engineer of extraordinary ability, named Theodore D. Judah, a native of Bridgeport, Connecticut, and in an arrangement for the supply from the east of the necessary materials for construction. Judah at once came to California and, setting to work, selected the route from Sacramento to Folsom, a distance of twenty-two miles. Grading commenced in the early part of 1855; track laying in the summer, on the arrival of a vessel with rails; and, as before mentioned, the road was opened in February, 1856. For various reasons, principally the great cost of labor and materials in those days and the dropping off of business consequent upon the deterioration of the placer mines, the enterprise stopped at Folsom. As a financial operation it did not prove as profitable as was anticipated; and in 1865, after passing through several hands, it was purchased by the principal owners of the Central Pacific Railroad Company and formed the first outside acquisition of that subsequently extensive aggregation embracing nearly all the railroad lines of the state, which became known first as the Central Pacific and afterwards as the Southern Pacific system.

The next important move, not counting various minor projects that were talked of and some that were started for minor roads, was the adoption on April 5, 1859, by the California legislature of a concurrent resolution calling for a railroad convention. The object, as stated in the resolution, was to promote the interest

¹ Hittell's Gen. Laws, 825.

and insure the protection and security of the people of California, Oregon, Washington and Arizona; to consider the refusal of congress to take efficient action for the construction of a trans-continental railroad, and to adopt measures whereby the building of such a road might be accomplished. For these purposes it provided for the holding of the proposed convention at San Francisco on September 20, 1859, to consist of delegates from the states and territories named—the people of each county being requested to send delegates equal in number to the members of the legislature of such states and territories to which they were respectively entitled.¹ In accordance with and under the authority of this resolution, a railroad convention was held in San Francisco and numerously attended by delegates from Oregon and Washington as well as from California. John Bidwell was chairman. Among the delegates the best posted and most efficient was Judah, the engineer of the Sacramento valley railroad, who appeared as a delegate from Sacramento. He had devoted much time and study to the problem of a transcontinental road; had thrown his whole heart into the project and thoroughly convinced himself of its practicability, and was in fact the main promoter of the convention. And it was chiefly, if not entirely, due to the fulness, clearness and satisfactory character of the information he furnished, that the convention declared its decided preference, among the routes mentioned, for the central one which he advocated, and appointed him to act as its accredited agent in presenting its proceedings to the president of the United States, the heads of departments and the congress at Washington and bringing to bear all legitimate influences to secure favorable action for a Pacific railroad bill.²

Judah proceeded at once to Washington and undertook the framing and pushing of a bill in accordance with the views of the convention. He had already spent much of his time during the three previous sessions of congress at the national capital, endeavoring to procure the passage of a bill making grants of land to California for railroad purposes. He was therefore familiar with the methods of congress and seems to have omitted nothing in

¹ Stats. 1859, 391.

² Report of Theodore D. Judah, &c., San Francisco, August, 1860.

order to accomplish his purpose; but, although he found the subject of a Pacific railroad a popular one, there was so much conflict and sectional jealousy that nothing important could as yet be accomplished. Accepting the situation without complaining, he wrote out a full report of his proceedings, which he transmitted to the executive committee of the railroad convention, accompanied by numerous important documents bearing upon the subject. A somewhat unusual part of his report, but characteristic of the man, was a statement that, although the expenses of his mission apart from his time had cost him over twenty-five hundred dollars, the only bills he had to present were two small accounts for printing in Washington and New York, amounting together to forty dollars. Having thus finished up his business for the time, without being in any respect discouraged and still as firm as ever in his convictions of the practicability of his proposed road and its importance to the country, he returned to California and resumed work at that end of the line.

The zeal, earnestness and untiring activity of Judah, which had already attracted attention, soon invited confidence. Among others who became interested in his projects were four of his fellow townsmen of Sacramento—afterwards famous as the railroad magnates of California,—Leland Stanford, Collis P. Huntington, Mark Hopkins and Charles Crocker. Huntington, like Judah, was a native of Connecticut; the other three were born in New York. They were all at that time engaged in mercantile business—Huntington and Hopkins being dealers in hardware, Crocker in dry-goods and Stanford in provisions and groceries. All had been born poor and, though they had come to California in the early days—Huntington and Hopkins in 1849, Crocker in 1850 and Stanford in 1852—neither of them was rich. Perhaps, if they had been at all wealthy, they would never have invested what means they had in so gigantic and hazardous an undertaking, no part of which they could, either individually or collectively, have carried out, and which as a totality in its then shape was for any such body of men generally regarded as folly or rather madness. But they knew pretty well what they were about. It happened that all, and particularly Huntington as a financier and Crocker as a driving railroad builder, like Judah as an engineer,

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proved to be peculiarly well qualified for the project; and, though in the beginning they could get hardly anybody in California to join or assist them but on the contrary were nearly on every side rebuffed and ridiculed, in the end they showed themselves eminently successful and, judging by their success, eminently adapted for the business. It was these men, and substantially these men alone, when Judah was trying to impress the community with the greatness of his scheme and inspire them with faith in it, that came forward and, to the extent of their means, aided in keeping him and his assistants in the field and thoroughly examining, not as perfunctory officials but as men who had a definite and earnest purpose in view, the different routes over the Sierra Nevada mountains.

At length on June 28, 1861, ten days after the meeting of the Republican convention that nominated Stanford for governor, the Central Pacific Railroad Company of California was organized. Its articles of incorporation were filed at Sacramento under the general railroad law of the state, which had been passed, superseding all other laws upon the subject, on May 20, 1861.¹ Stanford was chosen president, Huntington vice-president, Hopkins treasurer, James Bailey, a jeweler of Sacramento, secretary, and Judah chief engineer; and these, with a few others including Charles Crocker, became directors. The capital stock was named at eight million five hundred thousand dollars, divided into eighty-five thousand shares of one hundred dollars each. Stanford, Huntington, Hopkins, Judah and Crocker respectively subscribed one hundred and fifty shares; and other persons, who all except Edwin B. Crocker shortly afterwards dropped out, nearly as much more. It would be difficult to tell exactly what influence in respect to the organization of the company at that time was exerted by the breaking out of the civil war in the April previous. But doubtless much. However this may have been, it became evident almost directly after the firing upon Sumter that a railroad, and especially a railroad north of Mason and Dixon's line, had better chances of success than ever before, and that the withdrawal of southern members from congress had eliminated the greatest obstacle to any road, which consisted in

¹ Stats. 1861, 607.

their opposition either open or concealed. Now, all was changed; and the war, whether it should be a long or a short one, opened the eyes of the community and added many new and powerful reasons for the road.

The subscribers to stock were required to pay into the treasury ten dollars per share; and the money thus collected constituted a working fund. Judah was at once sent back into the mountains, which he had traversed over and over again more than a score of times, to make his final survey and location. His attention was especially confined on this occasion to three routes—one through El Dorado county by way of Georgetown, one through Illinoistown and Dutch Flat, and the third by way of Nevada City and Henness Pass. He found the middle or Dutch Flat route by far the most practicable. By it he could attain the summit at Donner Pass with lighter grades, at less distance and with fewer obstacles than by any other route. The problem presented was to ascend seven thousand feet, the height of Donner Pass, in a distance of not much more than seventy miles, or on an average of one hundred feet per mile. By careful examination, he found a long and unbroken spur of the Sierra Nevada, extending southwesterly from Donner Pass, most of the way along the north bank of the North Fork of the American river and between it and the South Fork of the Yuba and Bear river, to the Sacramento valley. By keeping on or near the ridge of this spur, the summit could be attained with a maximum grade not exceeding one hundred and five feet to the mile; and there would be no mountain river or cañon to cross, except a small tributary of Bear river a few miles above Dutch Flat. On the other hand, the eastern slope of the Sierra could be descended by taking advantage of two convenient ravines on the south side of Lake Donner; so that the Truckee river could be reached, at a distance of eleven miles from the summit, with a grade not exceeding the maximum before ~~mentioned~~. The Truckee river, forming the outlet carrying off the surplus waters of Lake Tahoe, runs nearly northerly, between what are called the east and west summit ridges of the Sierra Nevada, at an elevation of about six thousand feet above sea-level at Lake Tahoe and descending at the rate of about thirty-five feet per mile for some thirty miles, when it

suddenly turns eastward, passes through the so-called east summit ridge, in a depression which it seems to have worn for itself, descending the passage at the rate of about forty feet per mile; and then, after passing an extensive plain known as Truckee Meadows and the Washoe mountains, it turns northward again at Big Bend and empties twenty miles further on in Pyramid Lake, where its waters are evaporated or sink. Judah's route followed the Truckee, from a point near the outlet of Lake Donner and about fourteen miles north of Lake Tahoe, through the eastern summit ridge and Washoe mountains to Big Bend in the Humboldt desert—thus securing a comparatively easy grade not exceeding forty feet to the mile and entirely avoiding, so to speak, the second or eastern summit of the Sierra Nevada. The distance from Sacramento to the Truckee was one hundred and twenty-three miles, and to the state line one hundred and forty-five.¹

Judah estimated that he would have to cut eighteen tunnels, most of them over a thousand feet long but none reaching fourteen hundred. They were to be in rock, generally granite, and would require little or no timbering. As to the snow, he convinced himself from examination that the road could be kept open during the entire year. It was true that the usual depth of the snow was greater than in the eastern states; but most of the route was what was known as a "side hill line" or on the sides of slopes where the snow would slide off or could easily be removed. On the other hand, the full ordinary depth was not very great, as was indicated by the absence of the peculiar yellow moss of the Sierran heights on the trunks of trees up to only a small distance from the ground, as well as by the direction of the limbs of undergrowth and bushes and the observations and reports of mountaineers. These all showed that the greatest depth of undisturbed snow was about thirteen feet at the summit, lessening in each direction and substantially ending at Dutch Flat forty miles down the west slope, and less than half that distance on the east. Allowances would of course have to be made for drifting snow; and, for a couple of miles in the summit meadows, it would be necessary to elevate the line of the road above the common

¹Judah's Report of October 1, 1861.

level; but, as the greatest depths were not the result of any single fall but the accumulations of successive storms, it would ordinarily be sufficient to run snow-plows from the summit in each direction at each storm and clear away the snow as it fell. In respect to expenses, he estimated that the road, counting the distance from Sacramento to the state boundary at one hundred and forty miles, would cost about twelve and a half millions of dollars, or a little over eighty-eight and a half thousand dollars per mile—some of the road, particularly that near Sacramento costing only fifty thousand per mile, and some near the summit one hundred and fifty thousand.¹

A few days after Judah made his report—which set forth in admirable detail and with great force the results of his surveys and investigations—the Central Pacific Railroad Company directed him to proceed forthwith to Washington as its accredited agent for the purpose of procuring from the government appropriations of land and United States bonds to aid in the construction of the road. He accordingly took passage for New York via Panama on October 11, 1861. On the steamer, he found Aaron A. Sargent, newly elected one of the representatives in congress from California, to whom he had an excellent opportunity of explaining all the particulars of the project, and whose active and zealous aid he succeeded in securing. He also prepared an abstract of his recent surveys, which he caused to be printed and distributed in places where likely to do most good; and, among other persons, he sent copies to President Lincoln, the heads of departments, senators and representatives, railroad men and railroad journals. In New York, he met United States Senator James A. McDougall, at whose request he prepared a bill for introduction into the next senate. Though the breaking out of the civil war had thrown public affairs into great confusion, it powerfully suggested the importance and necessity of a road binding the Pacific with the Atlantic coast, and the time was regarded as peculiarly favorable for pressing the subject; but, on further consideration, McDougall determined to await action in the house of representatives.

Upon Sargent's arrival in Washington, he was not placed upon any of the standing committees of the house but simply assigned

¹ Judah's Report of October 1, 1861.

to a vacancy in the special committee on the Pacific railroad. This action, though not entirely complimentary to the new member, was beneficial to the railroad; for the reason that it turned all the time and zeal of one of the most energetic and effective legislators of the day into the one channel, and insured an advocate whom nothing could disconcert or weary. Very early in the session, after getting up a bill, Sargent introduced it into the house. It was referred to the Pacific railroad committee; but for a month or so it seemed impossible to accomplish anything. At length in January, 1862, while the house was discussing the state of the Union in committee of the whole, Sargent obtained the floor and, to the surprise of nearly everybody, instead of devoting himself to the prevailing topic of the day, delivered a speech in favor of the railroad. His remarks were so well put and forcibly urged as to draw attention to the subject, with the result that a meeting of the committee was almost immediately called and a determination reached to report favorably. On motion of Sargent, a subcommittee to prepare a new bill was appointed; but the main work of its preparation fell upon himself. There were by that time several bills before congress—all of them contemplating the building of the entire road from the Missouri to the Pacific by one company, except what was known as the Rollins bill which provided for two companies. This plan was adopted by Sargent—giving one end of the road to the east and the other end to the west. Various imperfections in the Rollins bill were remedied and changes made, so that the new bill consisted of what were regarded as the best parts of the other bills and comprised the supposed principal merits of all; and it met with general approval from the committee.

As soon as McDougall learned the action of the house committee, he called a meeting of the senate committee; adopted the Sargent bill, and reported it to the senate; and a few days afterwards the house committee reported the same bill to the house. There was, as was to have been expected, considerable opposition and hostility on the part of the advocates of some of the other bills; but, with Sargent in the house and McDougall in the senate, the new bill successfully passed the committees to

which it was referred under the rules; and, though there had been no joint meeting or agreement of the committees, they reported in the same favorable way—it being the first time they had ever acted in unison upon the same bill. This important and significant concurrence was possibly, and indeed very probably, brought about by the fact that the excellent and efficient Judah had managed to become appointed secretary of the senate committee and as such had charge of all its records and papers, was present at all its meetings, and enjoyed the privilege of the floor of the senate; while on the other hand, on motion of Sargent, he was also appointed clerk of the house committee and, besides being present at its meetings, had the privilege of the floor of the house likewise. After the bill was thus reported, some modifications were made to reconcile a few conflicting interests; and the measure came up for final action—first in the house, where on May 6, 1862, after a bitter struggle, it passed by a vote of seventy-nine yeas to forty-nine nays. On the next day, the bill as passed was transmitted to the senate, where on June 20, after another struggle almost as violent as in the house and the insertion of some alterations by way of amendments, it finally passed by a vote of thirty-five yeas to five nays. From the senate it went back to the house. On June 24, as it was thought best not to risk further controversy, the senate amendments were concurred in by the house; and on July 1, 1862, the bill was approved by President Lincoln and became a law.¹

The act, thus passed in 1862, was entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean and to secure to the government the use of the same for postal, military and other purposes." It commenced with incorporating the Union Pacific Railroad Company; authorized and empowered it to lay out, locate, construct, maintain and enjoy a continuous railroad and telegraph, from a point on the one hundredth meridian of longitude west from Greenwich between the south margin of the Republican river valley and the north margin of the Platte river valley in the territory of Nebraska to the western boundary of the territory of Nevada, and provided for the opening of books for the sub-

¹ Judah's Report of September 1, 1862.

scription of its capital stock which was to consist of one hundred thousand shares of one thousand dollars each and of which no one person was to own more than two hundred shares. It next conferred the right of way to the extent of two hundred feet on each side of the middle line of the road, including all necessary grounds for stations and buildings, and then granted five alternate sections of public land per mile on each side of the road, or all the odd sections within the limits of ten miles on each side, which had not been sold, reserved or otherwise disposed of or to which a pre-emption or homestead claim had not attached, and excepting also all mineral lands but giving the timber on such lands. The act further provided that, upon the completion and equipment of each forty consecutive miles of said railroad and telegraph, the United States secretary of the treasury should issue to the company United States bonds of one thousand dollars each, falling due in thirty years and bearing interest at the rate of six per cent per annum payable semi-annually, to the amount of sixteen bonds per mile; that said bonds should constitute a first mortgage upon the whole line of railroad and telegraph with all its stock and property of every kind, and that the company should pay or redeem such bonds at maturity, and on default thereof forfeit said railroad and telegraph to the United States.

It next provided that the Leavenworth, Pawnee and Western Railroad Company of Kansas might construct a railroad and telegraph line from the Missouri river at the south side of the mouth of the Kansas, to connect with the Union Pacific road, on the same terms and conditions. And it then provided that the Central Pacific Railroad Company of California might construct a railroad and telegraph line from the Pacific coast at or near San Francisco or the navigable waters of the Sacramento river to the eastern boundary of California upon the same terms and conditions, but requiring each company to file an acceptance of the conditions named in the office of the United States secretary of the interior within six months. Provision was next made for the construction of the road across the territories by any one of the companies, if not constructed by another, on the same terms. But, in consideration of the extraordinarily mountainous and difficult character of the country for one hundred and fifty miles

westwardly from the eastern base of the Rocky mountains and for one hundred and fifty miles eastwardly from the western base of the Sierra Nevada mountains, the bonds to be issued to the company constructing the same were to be three times the number provided for other portions of the road, or forty-eight thousand dollars per mile; and they were to be issued and the lands granted were to be set apart upon the completion of every twenty miles of such portions of the road; and, for the intermediate country between the Rocky and Sierra Nevada mountains, the bonds should be doubled, or at the rate of thirty-two thousand dollars per mile. The track of all the roads was to be of uniform gauge, which was afterwards fixed at four feet eight and a half inches. Provision was also made for connections with other roads; for a limit of time within which the roads should be built, being two years for the first one hundred miles and one year for each additional one hundred miles of the Union Pacific and half these distances for the Central Pacific, and for forfeiture in case of failure to complete in accordance with the act.¹

As soon as the bill was passed, Judah prepared and filed in the office of the secretary of the interior a map and designation of the route of the Central Pacific railroad through California; whereupon, as provided in the act, lands to the distance of fifteen miles on each side of the route were withdrawn from private enterprise, emption or sale. He then proceeded to New York and began making provisional contracts for iron and equipments for the first fifty miles of the road. On July 21, having successfully accomplished the object of his mission, he took the steamer from New York—carrying with him a testimonial from a large number of the senators and representatives in congress, thanking him for his assistance in aiding the passage of the bill, assuring him that his examinations and surveys had settled the question of the practicability of the route and enabled many of them to vote confidently on the great measure, and bearing witness to the value and effectiveness of his indefatigable exertions and intelligent explanations.² He had indeed succeeded admirably; and, so far as seen, his success was due almost entirely to himself and

¹ U. S. Stats. 1861-2, 489.

² Judah's Report of September 1, 1862.

without soiling his hands or leaving a stain upon his name. Upon his return, he called attention to the various advantages thus secured, especially the liberal loan by the United States of its bonds amounting to an aggregate of six millions of dollars for thirty years, the great prospective value of the land grants, the right to extend the road from Sacramento to San Francisco, and, most important as he thought of all, the right to continue the construction of the road and telegraph from the California boundary line until it should connect with the Union Pacific railroad and telegraph coming from the east; and he particularly urged the importance of continuing the surveys eastwardly at least as far as Salt Lake—at the same time expressing a positive opinion of the advisability of undertaking the construction of at least three hundred miles of the road easterly from California. He also gave an account of the business which the road could rely on in California and what it would undoubtedly secure from Washoe, together with the revenue it might expect to receive—very clearly showing the most unexpected and extraordinary results, unlike those of any other road ever built except that over the isthmus at Panama.¹

The commencement of construction or “breaking of ground” of the Central Pacific railroad, as has already been stated, took place at the corner of Front and K streets in the city of Sacramento on January 8, 1863,—the first shovelful of earth being moved by Stanford, president of the railroad company, the day after his inauguration as governor, in the presence of a large and enthusiastic concourse of people including legislators, judges and other state officers. From that time the work progressed—not so rapidly as was desired, but more rapidly than many expected. Notwithstanding the prospective fortune of the company in bonds and lands, it was difficult to raise money; capitalists were timorous of investing in an enterprise considered more or less uncertain and at a time when the civil war was still pending and the finances of the country greatly deranged. Nevertheless, Huntington, Stanford, Crocker and Hopkins plunged into the work, and in a short time found out what part each was specially fitted to carry on. Huntington became financial agent

¹ Judah's Report of October 22, 1862.

and undertook to look after business connected with the road in the eastern states; Stanford undertook much the same kind of work in California; while Crocker devoted himself to the superintendence of the construction, and Hopkins to the economy and superintendence of supplies. Quite as important as any, though his work was nearly ended, was Judah, who continued at the head of the engineer department and saw to the proper launching and starting of the gigantic undertaking. In July, 1863, six months after the breaking of ground at Sacramento, he made a report upon the progress of construction and approximate estimate of cost of the first fifty miles of the road. He gave reasons why the new undertaking could not adopt the line of the Sacramento valley railroad to Folsom, and then described with great particularity the line adopted across the American river and by way of Griders to and up the divide between Antelope and Secret Ravines to Newcastle and thence by way of Auburn and Clipper Gap to New England Gap, fifty miles from Sacramento. The cost of this part of the road he estimated at nearly three and a quarter million dollars, or an average of nearly sixty-five thousand dollars per mile. Such at least were the figures, based mainly upon the contracts for grading, masonry, bridging, ties and track-laying which had been given out on December 27, 1862, to the firm of C. Crocker & Co. The distance to Griders was about eighteen miles, divided into eighteen sections, all or nearly all of which were subcontracted by C. Crocker & Co. to other parties. And in July, 1863, when the report was made, the bridge over the American river was nearly completed and most of the line graded and ready for the rails. He also mentioned the fact that six thousand tons or over sixty miles of iron rails had been purchased and contracted to be delivered at the rate of five hundred tons per month, together with spikes and chairs for sixty miles of road, six locomotives, six first-class passenger cars, two baggage cars, twenty-five platform freight cars, fifteen box freight cars, and frogs, switches, turn-tables and other necessities for fifty miles of road. He called especial attention to what was necessary to be done in order to comply fully with the act of congress, being apparently conscientiously anxious on the subject and particularly in securing the line through Nevada;

and, in conclusion, he invited notice to forty-eight specimens of rock from different localities on the line of the road, seven specimens of gold, silver and copper ore, two of iron, one of asbestos and one of soap-stone from the vicinity of the line.¹

In October, 1863, for the purpose of being present at the next session of congress and looking after further proposed legislation in reference to the Pacific railroads, Judah again took passage for Washington. But on his way he was stricken with fever and died in New York on November 2, 1863, at the early age of thirty-seven years. In him perished a genius—one of the greatest in his important line—without whom the way over the Sierra would not have been found perhaps for many years. Like many other men of genius his reward consisted chiefly in his own activity and the consciousness and satisfaction of doing noble work thoroughly and well. He made for others, or enabled others to make, uncounted wealth and to occupy places of first-class prominence in the world; but, for himself, he made in the way of money comparatively nothing; and in name and recollection, as new and inferior men took his place and easily continued in the path he had found and so clearly pointed out, he was in a short time substantially forgotten. While the railroad in its completed state and its offspring and imitations, which now span the continent, have changed the face of the globe and engrossed to a greater or less extent the attention of courts and cabinets in almost every quarter of the earth, it is only in old records and reports that the name of Judah, the bright spirit that called them into being, is to be found. But whether remembered and recognized or not—and it is only to posterity and not to him that it can make any difference—his admirable work is his monument, and it must and will forever remain so.

¹ Judah's Report of July, 1863.

CHAPTER VI.

PACIFIC RAILROADS (CONTINUED).

THE magnitude of the enterprise across the Sierra Nevada mountains and the need of current money to carry on the work of construction—which the railroad company did not possess and could not rely upon raising merely on its prospects, and particularly while those prospects, as was the case, were continually and by every possible means misrepresented and belittled by its enemies—rendered it necessary to apply for further aid in the way of subsidies. But the recognized great advantage of the road and the general desire that it should be built at any cost predisposed almost everybody in its favor; and accordingly, when the representatives of the company, and chiefly Stanford in California and Huntington in Washington, commenced the work of soliciting on a grand scale, they met with extraordinary success. This part of the business was started in California under the management of Stanford at the legislature of 1863; and the result was an act, approved April 2, 1863, authorizing the county of Placer if the electors so voted to subscribe, for stock in the railroad, two hundred and fifty thousand dollars in county bonds, which were to run for twenty years and be payable in gold coin with interest at eight per cent per annum;¹ an act, approved April 14, 1863, granting to the railroad the right of way and right to construct and operate its road upon certain specified streets in the city of Sacramento and certain levee and other public lands outside of said city, and also granting to it a portion of the water front of said city and the tract of land within its limits commonly known as "Sutter Lake" or "The Slough;" an act, approved April 17, 1863, authorizing a change and relocation of the line of the road between Sacramento and the state boundary and a reor-

¹Stats. 1863, 145.

ganization of the company, if found advisable; an act, approved April 22, 1863, authorizing the city and county of San Francisco if the electors so voted to subscribe for stock to the amount of six hundred thousand dollars, in addition to four hundred thousand to the Western Pacific Railroad Company, in city and county bonds running thirty years and payable in gold with seven per cent annual interest; an act, approved April 25, 1863, authorizing the city and county of Sacramento in like manner to subscribe for three thousand shares of the capital stock, paying therefor three hundred thousand dollars in city and county bonds; an act, approved April 25, 1863, requiring the state to pay five hundred thousand dollars at the rate of two hundred thousand dollars when the first twenty miles were completed, a like sum for the second twenty miles, and a hundred thousand when fifty miles were finished, in consideration of which the company was to transport free of charge public messengers, convicts going to the state prison, materials for the construction of the state capitol, articles for exhibition at the state agricultural fairs and, in case of war, invasion or insurrection, troops and munitions of war belonging to the state,¹ and an act, approved April 27, 1863, authorizing and empowering the Sacramento, Placer and Nevada Railroad Company to sell and convey to the Central Pacific Railroad Company all or any part of any railroad built by it, together with its franchise and all its rights, privileges and property.²

In December, 1863, when the legislature of 1863-4 convened in accordance with the new amendments to the constitution and Low became governor instead of Stanford, the railroad still continued popular. Though there began in some quarters to be a feeling that it had obtained too much, this feeling was not general. On January 9, 1864, in the senate, A. M. Crane of Alameda county introduced a bill to repeal the above mentioned act of April 25, 1863, requiring the state to contribute five hundred thousand dollars; but his bill, as well as another by him for a rival road over the Sierra Nevada, was throttled by a committee favorable to the Central Pacific Railroad to which it was referred.³ On the contrary, a new bill, revamping and enlarging

¹ Stats. 1863, 288, 320, 380, 447, 465.

² Stats. 1863, 749; see Hittell's Gen. Laws, 4790.

³ Senate Journal, 1863-4, 149, 389.

the act of April 25, 1863, and as such superseding it, was passed and approved on April 4, 1864. This new act contained a preamble reciting the active existence of the war of rebellion; the aid granted by the United States for the construction of the road for military and other purposes; the insufficiency of such aid to complete the work as speedily as necessary, and the importance of its early construction to repel invasion, suppress insurrection and defend the state against its enemies. It therefore authorized and empowered the company to issue its bonds of one thousand dollars each to an amount not exceeding twelve millions of dollars, payable in gold coin in not exceeding twenty years from January 1, 1865, with semi-annual interest at the rate of seven per cent per annum. These bonds were to be secured by mortgages on the railroad, rolling stock, buildings, machinery, fixtures and franchises of the company; but, so far as the first fifteen hundred of the bonds, representing a million and a half of dollars, were concerned, it was enacted that the interest thereon should be payable by the state at its treasury, provided however that the counties of Placer and Sacramento and the city and county of San Francisco should be exempt from all liabilities as stockholders of the company on such bonds over and above the stock theretofore subscribed by them respectively. Provision was then made for the levy of a state tax at the rate of eight cents on each one hundred dollars of taxable property in the state for the ensuing twenty years and for the creation of a state "Pacific railroad fund" for the payment of the interest on such first fifteen hundred bonds. The act also contained the same conditions as the previous one in reference to free transportation and an additional provision, requiring the company to convey to the state a granite quarry of three hundred and twenty acres on the line of the railroad in Placer county, twenty-two miles from Sacramento. Another act was approved on the same day, authorizing and empowering the board of supervisors of the city and county of San Francisco to compromise and settle for cash all claims of the Central Pacific and Western Pacific railroad companies for city and county bonds under the above mentioned acts for their issue, in case said acts should be decided to be valid. Still another act was approved the same day, purporting to aid in carrying out the

act of congress by authorizing and empowering the company to extend its road and telegraph not only in the state but in the territories lying east of the state and between it and the Missouri river, and on, over or along any street, road, river or stream, and to condemn private property—at the same time, in as far as possible, confirming to and vesting in the company all rights, privileges, franchises, power and authority conferred by the act of congress.¹

All the foregoing mentioned acts of the legislature of 1863 authorizing railroad subscriptions by counties, that required a vote of such counties to give them effect, received such vote. Among them, it will have been noticed, there was one in favor, to the extent of four hundred thousand dollars, of the Western Pacific railroad. This road, which was a continuation of the Central Pacific and was constructed under an assignment executed in December, 1862, of its rights and franchises from Sacramento westward, was to run from San José, by way of Alameda creek, Livermore Pass and Stockton, to Sacramento and was intended as a link connecting, in conjunction with the San Francisco and San José railroad, the city of San Francisco with Sacramento and the transcontinental line. The San José railroad, which had been talked about from the time of the first legislature and for the construction of which several companies were vainly formed, was finally started under a new company organized in 1860. The contract of construction was let to Charles McLaughlin and Alexander H. Houston, who were to complete the road in three years for two millions of dollars, of which one-fourth was to be in cash, one-fourth in county bonds, one-fourth in mortgage bonds of the company payable in ten years with eight per cent interest, and one-fourth in capital stock of the company. It had already in 1861, principally on the plea of its being a link in the transcontinental road, received a subscription of three hundred thousand dollars from the city and county of San Francisco, another of one hundred thousand dollars from San Mateo county, and another of two hundred thousand dollars from Santa Clara county.² There were few

¹ Stats. 1863-4, 344, 388, 471.

² Stats. 1861, 128, 134, 198; 1862, 494.

difficulties in its construction, most of the line being substantially on a level; and it was completed and successfully opened from San Francisco to San José in January, 1864. On the other hand the Western Pacific railroad, which was as before stated to share in the grant of bonds and public lands under the act of congress of July 1, 1862, and to receive four hundred thousand dollars of the one million dollars to be paid by San Francisco under the state act of April 22, 1863, was also to receive by acts of the same year two hundred and fifty thousand dollars from San Joaquin county and one hundred and fifty thousand dollars from Santa Clara county.¹ And all these large amounts of money thus provided for were actually or virtually paid the respective companies named, except that, on account of the active opposition of the city and county of San Francisco represented by its mayor and other officials and its most influential newspapers, its subscriptions of six hundred thousand dollars for the Central Pacific railroad and four hundred thousand for the Western Pacific were reduced by compromise, after considerable litigation, to four hundred thousand dollars to the first-named company and two hundred and fifty thousand to the second; but at the same time, on the other hand, the city and county relinquished its stock in the companies, which in the sequel proved to be a mistake as the stock subsequently, on the enterprise becoming an assured success, rose to much greater value.²

While the Californian end of the Pacific railroad business was thus kept up by Stanford and his helpers on the Pacific coast, Huntington, who after Judah's death was left substantially to his own resources, managed its affairs in the east and at Washington. It was claimed by him and his friends that the subsidies granted by the law of 1862 were entirely inadequate to build the railway, while the need of securing speedy communication between the Atlantic and Pacific became daily more and more apparent. All sorts of arguments were used to strengthen this claim, among which was the danger of losing California to the Union if the road were not speedily constructed, and various others equally as

¹ Stats. 1863, 80, 276.

² Hittell's San Francisco, 348; Orders of Board of San Francisco supervisors, No. 582, June 21, 1864, and No. 640, May 29, 1865.

strained. But there were many more weighty reasons, among which were the really great advantage in almost every point of view of the road, the incalculable effect it would have in developing the country and increasing its wealth, the great fall in the value of currency and securities and rise in the price of labor and materials caused by the war, and the fact that the Union Pacific had not started and seemed unwilling to start the construction of its part of the road unless the subsidies were enlarged.

Huntington himself proved to be a man of great strength; and he was helped by the whole force of the Union Pacific company and its friends. The result was the passage by congress and approval by President Lincoln on July 2, 1864, of a new act, amending the former one of July 1, 1862, in various important particulars. Many of these related exclusively to the Union Pacific company; but some affected also the Central Pacific and the Western Pacific, which were in fact a part of the same general line. One and a most important of these was increasing the number of alternate sections of the public land to be given from five to ten per mile on each side of the road and within twenty miles of it, and reserving from sale lands within twenty-five miles, instead of fifteen, on each side, and in addition providing that the mineral land to be reserved was not to be construed to include coal or iron land. Another was an extension for an additional year of the time for the Central Pacific to build the first fifty miles of its road and requiring only twenty-five miles to be completed each year thereafter, provided the whole distance to the state boundary should be finished in four years. Again, it is to be noted that, under the provisions of the previous act, all compensation for services rendered to the government, which were to be charged at fair and reasonable rates, and at least five per cent of the net earnings of the road were to be applied to the payment of the bonds loaned to the company and interest thereon: under the new act only one-half of the compensation for such services was to be applied to such payment. Another provision of the previous law was for the reservation by the government, until the whole road should be completed, of from fifteen to twenty-five per cent, according to location on the line, of the bonds to be delivered over to the company: this by the

new law was repealed. Among the other provisions of the new act was one that a failure of one company to comply with the law in any respect should not affect any other company that might comply.

But the most important change made by the law of 1864, and the one by which Huntington and his coadjutors accomplished most good, at the time at least, for their roads, was a new provision allowing each company, on the completion of each section of twenty miles, to issue first mortgage bonds on its road and telegraph to an amount not exceeding that of the United States bonds issued or to be issued thereafter and of even date, tenor and character; and subordinating the mortgage lien of the United States bonds to those thus to be issued by the company. This in effect took away or very much weakened the security of the government for its bonds; while, by securing the bonds to be issued by the company by a first mortgage lien, it enabled them to be negotiated at once at the highest market rates and without difficulty. From that moment, if not before, there was no longer any lack of money; and from this provision and the increase in the land grants, in addition to the state and county subsidies and the great profits after the road commenced running, it can readily be understood where, notwithstanding the great cost of construction, a large part of the subsequent immense wealth of the railroad, or rather the so-called railroad magnates, came from.¹

The progress of the Central Pacific road, and particularly after the passage of the amendatory act of July 2, 1864, was comparatively rapid. In May, 1864, about fifteen months after starting work, it had twenty-two miles constructed and, in June, thirty-one miles to Newcastle—attaining in that distance an elevation of one thousand feet above tide water. From Newcastle to Clipper Gap, twelve miles, with an ascent of nearly eight hundred feet and very difficult work, the road was completed on June 10, 1865; and to Colfax, formerly known as Illinoistown, a further distance of twelve miles, it was done by September 1, 1865—making fifty-five miles from Sacramento and attaining an elevation of twenty-four hundred and forty-eight feet. Under the act

¹U. S. Stats. 1863-4, 356.

of 1862, the first fifty miles were to be completed within two years after the filing of written acceptance by the company of the terms of the act, which took place in December, 1862; but that period was extended one year by the act of 1864; and the road to Colfax was completed and not less than three daily trains each way were run over it more than three months before the expiration of the time.¹ Under the act of 1862, it was provided that the company was to receive United States bonds to the extent of forty-eight thousand dollars per mile for one hundred and fifty miles eastwardly from the western base of the Sierra Nevada mountains, which base was to be fixed by the president of the United States. As can easily be understood, the fixing of this point was very important to the interests of the company in its early struggles for money; and it was doubtless not without considerable management that President Lincoln, who of course had no personal knowledge of the fact, was induced to fix that western base at an almost imperceptible rise, in the middle of what was always and is still considered the valley or plain, and only seven miles northeast of Sacramento.²

Meanwhile very considerable opposition to the road was made by its enemies. Besides the litigation with San Francisco before mentioned, there was more or less in reference to subsidies of other counties. In addition to or perhaps rather as a part of the trouble were the reiterated statements of various newspapers that the road would not and could not ever be finished across the mountains. Among the most influential adversaries and opponents were the Pacific Mail Steamship Company, the California Steam Navigation Company, Wells, Fargo & Co. and the California Stage Company, with the business of each of which it would necessarily interfere. But the most bitter, and as it proved the most ill-founded, opposition was that of Lester L. Robinson and others, who were more or less interested in the Sacramento valley railroad running from Sacramento to Folsom and its possible extension by way of Placerville and the south end of Lake Tahoe to the Washoe mines. As soon as the Central Pacific Company had determined upon its route north of the North Fork of the

¹ Stanford's Statement of Progress of Work, October 10, 1865.

² Statement of the Central Pacific Company of January 12, 1865.

American river and got under way to build, it was at once seen that its success would substantially destroy the value of the route by railroad to Folsom or as much further as might be built and thence by stage road through Placerville and over the mountains to Virginia City. Immense traffic in passengers and freight followed that line and yielded large profits—the amount paid on freights across the mountains from California in 1863 being said to have been about thirteen millions of dollars, not counting return freights or passenger fares,—a great part of which business would cease as soon as the Central Pacific should approach the summit and afford cheaper and more convenient transportation than the Placerville route to the Nevada mines. With the end in view of securing this traffic, the Central Pacific, as soon as it got well up towards Dutch Flat, made arrangements for a wagon and stage road from that place over the mountains in advance of its rails; so that passengers and freight for Carson valley could reach it at much less cost and with more speed than by the other road, while at the same time the transportation rates, though much less than by the other route, would still be very remunerative. This diversion the Placerville route people were of course interested in preventing; and, as very soon appeared, they were not particularly scrupulous in the means they employed to accomplish their purpose.

One measure they adopted, and so far as it went a perfectly legitimate one, after failing to induce the Central Pacific to buy them out, was to extend their road further towards the summit. In this effort they managed to get as far as Latrobe, some fifteen miles southeast of Folsom; and the road was afterwards extended as far as Shingle Springs and finally, under other auspices, to Placerville. But the chief method they took to injure their rival, which was pushing ahead in spite of them to the summit, was by misrepresentations and abuse. They pretended that the difficulties of crossing the heights above Dutch Flat with a railroad were insuperable; that the Central Pacific managers knew such to be the fact, and that all they contemplated was to get up high enough to reach and connect with their Dutch Flat wagon road and thereby monopolize the valuable transportation business to and from the Nevada mines. On the assumption of

the truth of this assertion and others equally void of truth or support, they termed Judah's grand project the "Dutch Flat swindle"—a name which was eagerly caught up and repeated by the inimical newspapers—and in almost every manner possible they tried to belittle Judah, impugn his character and skill, falsify his surveys and reports, and break down the credit of the Central Pacific and its managers. These abusive misrepresentations—to give them no worse name—came out most strongly in the early part of 1865, in connection with investigations as to the question of a subsidy by the legislature of the then new state of Nevada. At the constitutional convention for that state, held in the summer of 1864, Stanford, the president of the Central Pacific, had by invitation made an address. It had been proposed in that convention that the intended state should grant fifty thousand dollars a mile for every mile of road constructed in the state to the first railroad from Pacific tide water that should reach the state line. He urged that the proposition should be changed so as to give to the Central Pacific company whatever was given, either by a direct grant or a guaranty of interest on its bonds, with the object chiefly of enabling it to push on at once over the mountains, or, if that could not be done, that nothing should be done. And he succeeded in accomplishing the last part of his request by having the objectionable clause stricken out.¹ Afterwards, in January, 1865, at the first legislature of the state, besides the adoption of a series of resolutions asking congress to make an appropriation of United States bonds to the amount of ten millions of dollars to the first complete line of railway across the mountains, a special committee of five was appointed by the senate to collect all information that could be procured in reference to the various proposed railroads and report what action in reference thereto ought to be taken by the legislature. To the calls for information made by this committee, the Central Pacific company answered with a very full statement of its affairs, resources, prospects, work done, work to be done, and estimates of cost; and a few weeks later Lester L. Robinson, representing the rival route, wrote a letter which not only provoked a great deal of adverse comment but, in view of all the facts, very clearly deserved as much as it received.

¹ Proceedings of Constitutional Convention of Nevada.

Robinson, who claimed to be a civil engineer and to know all about the route of the Central Pacific road above Colfax, pronounced it in effect impracticable; and he said he could not conceive how any set of men could seriously undertake to construct a railroad over such a country. It was not only impossible to build from Colfax to Dutch Flat, but it was worse from Dutch Flat to the summit, and worst of all from the summit to Truckee. He even went so far as to say that Judah, notwithstanding his reports to the contrary, was convinced that the route was a hopeless one; that he was opposed to the location; that the fixing upon it by the company caused him to leave its employ; that when he left for the east the last time it was not in the service of the company, and, finally, that the company had given him one hundred thousand dollars of its first mortgage bonds not to expose his knowledge that the route was a hopeless one and the road could not be built over it. Robinson said further that the route beyond Colfax was not located or, if it were, that the company, on account of its impracticability, dared not make public the particular location on the ground; while on the other hand he was certain that the Placerville route was much more desirable and would subserve the interests of the state of Nevada far better than the Central Pacific, which he represented as attempting to lay everybody under contribution to aid it in building a railroad only far enough into the mountains to divert all the Nevada freight and travel upon their Dutch Flat wagon road. In conclusion he said he felt assured, from his intimate acquaintance with Judah, that no reliance could be placed upon his estimates of cost; that his surveys were not of a character to base any calculations upon, and that his maps of profiles were "projected," or in other words not based upon actual field notes. To this tissue of exaggerations of fact, which were of themselves gross enough to defeat their own objects, Stanford replied, showing its misstatements and defending Judah's memory; and Robinson rejoined. But it seems probable that from the first both sides might as well have saved their pains. The state of Nevada appears to have been in no condition to help any transcontinental railroad and had quite enough on its hands to build local roads connecting its principal places with the great

thoroughfare that soon came forging ahead through the Truckee meadows and Humboldt plains without its assistance.¹

While this controversy was going on in Nevada in the early part of 1865, the building of the road from Colfax up towards the summit, which Robinson had in substance pronounced madness, was being vigorously pushed. At the beginning of that year, the prospects of a speedy close of the civil war and several decisions of the courts, sustaining the constitutionality of the subsidy acts and in other respects favorable to the company, placed it in such a position as to justify it in putting forth all its energies. A call was issued for five thousand laborers, and every able-bodied man that would work and could be procured was engaged and given steady employment. Though the number that applied was at first comparatively small, it gradually increased on account of the high wages, the steadiness and reasonableness of the service and the certainty of getting pay when it was earned. In October, 1865, there were five thousand men with six hundred teams of horses—looking like and making as it were a swarming army along the section under way—actually employed in the work of construction. The greater number of the laborers, on account of the unwillingness of white men to leave what they supposed the more profitable or congenial work of mining or farming, were Chinamen, who by that time constituted a very large element in the population of California and were found on trial to be, as Stanford said of them, “quiet, peaceable, industrious and economical—ready and apt to learn all the different kinds of work required in railroad building” and quite “as efficient as white laborers.” More prudent and saving than whites, they were contented with less wages; there was in fact, notwithstanding representations to the contrary, no system of slavery, serfdom or peonage among them, but each man received his equal proportion of wages monthly in coin according to his labor, and there could be no doubt the company could, within another year, if it wished, procure fifteen thousand more laborers of the same kind and on the same terms. It could thus be enabled, not only to complete the work in the shortest practicable period, but even in

¹ Letter of L. L. Robinson, February 3, 1865; Stanford's Reply, February 14, 1865; Robinson's Rejoinder, February 23, 1865.

some degree to meet the public impatience for its completion. And "without them," Stanford further said, "it would be impossible to complete the western portion of this great national enterprise within the time required by the acts of congress."¹

At the commencement of the work in 1863 and before any of the money from the various subsidies could be made available, reliance had to be had upon money borrowed on promises and personal responsibility. This was raised chiefly by Huntington in the eastern states. Afterwards when the act of 1864 was passed, which doubled the company's lands and in effect doubled its bonds, there was no longer any trouble about finances; and the main question was how to dispose of the vast amounts that were beginning to flow in on every side. At the start, and for the first section of eighteen miles of the road, as has been stated, the work was done by subcontractors, or in other words a contract for the whole section was made with the partnership of C. Crocker & Co. and by that firm subcontracted to other parties. But, as it soon became apparent to the railroad managers that they might as well make the profits of construction as pay them out to others, a new system was adopted and the work was thenceforward done not by outsiders but directly by the firm of C. Crocker & Co., consisting of the railroad magnates; and in this manner the company contracted with its managers or, in other words, its managers in the name of the company contracted with themselves. From that time the profits, which grew larger and larger, flowed into their own coffers, not as railroad directors but as partners of the firm of C. Crocker & Co. The result was that they immediately began to grow wealthy as private individuals; and as good luck in the form of the cessation of the war, the fall of gold and in other respects favored them on every side, the commencement was made of their multi-millionaire fortunes. But whatever they made and however they made it, the work they did was well done and enormous in extent. It was substantially all under the direct superintendence of Charles Crocker, who had rapidly developed from a small dry-goods dealer at Sacramento into a great organizer and manager in the face of the world. He was constantly on the move, rushing

¹Stanford's Statements of Progress of the Work, October 10, 1865.

from point to point and keeping everything hot and everybody up to the mark. After Judah's death the engineering was attended to by Samuel S. Montague as chief engineer with George E. Gray as consulting engineer; but the engine that drove everything ahead was Crocker. He was a sort of general; and the sight of his armies of Chinese road-builders—many of them imported for the purpose, completely organized into companies and moving at the word of command like thoroughly drilled troops—was a spectacle not to be forgotten.

About the same time, and for the like reason that money was flowing in upon them in such vast quantities, the railroad managers began to understand the value of the company stock; and, instead now of offering it for sale or disposing of it, as had been their previous policy, they commenced gathering it in whenever and wherever a good opportunity presented itself. As has already been stated, they had in 1864, very judiciously in a business point of view, taken advantage of a popular outcry made against them in the city and county of San Francisco to compromise their claim against the city and county for six hundred thousand dollars of its bonds for which they were to give an equal amount of the company's capital stock, by accepting a gift of four hundred thousand dollars in city and county bonds and saving their stock. It turned out to be a losing compromise for the city and county, as the stock afterwards proved for a time at least to be very valuable; and thus the city and county not only lost its gift of four hundred thousand dollars in bonds but also the excess over that sum which the stock it refused to hold became worth. But at the same time, and almost in the same proportion that the railroad company or its managers thus took advantage of every point in their favor and thus grew rich, they made enemies. The litigation especially that accompanied their numerous controversies, in which they always employed the best and most effective legal talent in the state and always fought with vigor and determination, caused bitter enmities. And these enmities, as they grew and increased, and the very general support they received from the newspapers were not only the effect but also the cause of much bitterer feeling against the railroad than always appeared upon the surface.

The Sacramento valley, or Sacramento and Folsom, railroad company, under the management chiefly of Robinson, growing more and more angry as it found its prestige and prospects of making head against the Central Pacific slipping away, still maintained its desperate opposition. After failing to sell out to or stop the progress of the Central Pacific, its main project was to build a new road from its station at Brighton on the American river about five miles southeast of Sacramento direct to Freeport at the head of tide-water navigation on the Sacramento river about ten miles south of the city. In connection with this project, which would leave Sacramento on one side, a new road, to be known as the Placerville and Sacramento valley railroad—using the Folsom road as far as constructed—was to be at once built to Placerville and serve as a link in a transcontinental road over Johnson's Pass and by way of Carson valley eastward. As already stated, it managed to advance to Shingle Springs; and, in view of its assurances of determination and ability to go ahead, it in 1866 received from congress a grant, conditioned on its completion by July 4, 1869, of the odd numbered sections of public land, not mineral in character, within twenty miles of the line from Folsom to Placerville. It perhaps cannot be said that there was no intention on the part of the projectors to push this Johnson Pass road over the mountains; but, however that might be, they never did, or could do, much towards it. The Central Pacific was by that time entirely too powerful and had gone too far to be much hurt. In 1874, as the conditions of the congressional grant of land were not complied with, it was, at the request of the legislature of California, revoked and the land restored to the public domain.¹ Not only this, but the managers of the Central Pacific company, in pursuance of a business principle early adopted by them to prevent and remove opposition and competition wherever it could be done at not too great a cost, in time succeeded in purchasing enough of the stock of the Placerville road to control it and destroy the possibility of further or future rivalry. They had previously done much the same in reference to the Sacramento, Placer and Nevada railroad, another possible rival, which was seriously intended to run up

¹Stats. 1871-2, 972; 1873-4, 962; U. S. Stats. 1873-4, 29.

by way of Nevada City and cross the mountains by some pass north of Donner. And so, on every side, they fought everything and everybody that instituted or threatened interference, even in a small way, with their gigantic enterprise.

It was impossible, in view of the vast wealth and power which it was soon seen had been vested by the government in the Central Pacific Railroad Company and the determination and ability manifested by it to make the very best use of them for its own advantage, not to embitter the old enmities and provoke new ones. On nearly every side there were complaints of its conduct, some well-founded and many ill-founded. Even Placer county, which perhaps derived more benefit in proportion to its position and condition than any other county in the state, was disposed to make much trouble. It understood, or pretended to understand, that the railroad magnates claimed that the public lands donated by congress were in fact granted to the incorporators and that they had sold them to the company for paid-up capital stock amounting to several millions of dollars—thereby enriching themselves to the loss of stockholders, who were not directors, and among whom was the county of Placer. This claim, which was untrue in fact and did not touch the really objectionable parts of the railroad management, amounted to nothing however and did more harm to Placer county than good. Another claim was that the railroad company had demanded patents for mineral lands in Placer county and thereby threatened, notwithstanding the exception of mineral lands from the grant of congress, to deprive miners of their mining claims. This matter was brought up in the legislature of 1865-6, which adopted a resolution in effect asking for the withholding of patents until after it should be ascertained what lands were mineral and what agricultural, and also asking for clearer and more positive definition of the rights of and reservations in favor of miners.¹ But before these requests reached the president of the United States, patents had issued for some four hundred and fifty thousand acres; and for a while considerable apprehension was felt. When however the patents were examined and found to exclude, or in other words save and except, mineral lands and miners' rights, as was in fact prescribed

¹ Stats. 1865-6, 901.

in the act of congress under which the patents issued, it was seen that no harm was or could well have been done, and that the alarm manifested and trouble taken had been needless.

Another matter of controversy in Placer county, indicative of strained relations between the railroad and the officials, and the beginning of a long series of controversies on the same subject not only with counties but also with the state, was in reference to railroad taxes. In 1864, the assessor of Placer county fixed the value of the road in that county for assessment purposes at six thousand dollars per mile. This the district attorney claimed to be too low and demanded that it should be raised to twenty thousand dollars per mile. The board of equalization, however, fixed it at a little over twelve thousand dollars per mile; and the tax was paid. In 1865, apparently on account of some oversight, it was again fixed at six thousand dollars per mile, and the tax paid at that rate. In 1866 it was raised to fifteen thousand dollars per mile, and the company refused to pay. A suit was brought and judgment obtained; but on appeal to the supreme court the revenue law, upon which the assessment was based, was found to be in some respects vague and uncertain; and by a compromise the county accepted and the railroad paid taxes on the old valuation of six thousand dollars per mile. Subsequently a contest arose with the county in reference to its stock in the company; and, after considerable litigation, it was brought to an end by an act of the legislature, passed in 1870, which required the supervisors to sell the stock to the company;¹ and the money received was applied to the redemption of the county bonds that had been subscribed. A somewhat similar contest arose in reference to the stock held by Sacramento county; and it was settled in much the same manner—the company almost invariably knowing most of what was advantageous and getting the better of the county. Subsequently, after the Western Pacific company had joined or been swallowed up by consolidation with the Central Pacific company, San Joaquin county, in virtue of its subscription to the Western Pacific, attempted to force a thorough exposition of all the proceedings and business methods of the Central Pacific. It based its plea for such relief upon the claim

¹ Stats. 1869-70, 866.

that it was a stockholder in the company and as such entitled to its proportion of the dividends earned, which it alleged to be upwards of fifty millions of dollars. But, as the litigation turned out, the county failed in making out its claim and was finally obliged, like Placer and Sacramento, to sell out its stock to the company, receiving indeed as a matter of fact greater value than its original subscription but losing the subsequent great increase in the value of the stock.

In the meanwhile, and notwithstanding these and other annoyances and conflicts—some doubtless occasioned by itself but most of them aimed against it by its enemies—the company kept on with its army of tireless and uncomplaining laborers unrestingly building its road to and over the summit. There was no trouble encountered except what had been fully seen, appreciated and set forth by Judah in his original surveys. There were no harder rocks to be drilled than he had stated; no steeper grades to be overcome than he had measured; no more extensive or difficult cuts, fills or tunnels than he had described. He had doubtless not calculated on the multitudinous army of yellow men from the other side of the Pacific that was to do the heavy labor; but that was only so much the more in favor of the progress, completeness and speed of the work. In 1866, besides the sixty miles and over of road already built from Sacramento, thirty miles more were completed, and in 1867 some forty-six additional miles, with telegraph line, snow sheds where most necessary, water-tanks and stations; and the road, emerging from the mountains, reached the state boundary line near Verdi and ran out into the level land of the Truckee meadows. About a year previous to reaching this point, and in great part the cause of this rapid progress, there had been several very important changes made in the acts of congress, under which the work was being done, by the passage of a new act, approved on July 3, 1866, which clearly showed that Huntington had not been idle at Washington. The new act authorized the Union Pacific company to locate, construct and continue its road, on the best and most practicable route from Omaha in Nebraska westward, without reference to the initial point on the one hundredth meridian of west longitude before fixed upon; but at the same time requiring

it to be constructed in a continuous completed line until it should meet the road of the Central Pacific company; and on the other hand it authorized the Central Pacific company, in the same manner, to locate, construct and complete its road eastward, in a continuous completed line, until it should meet and connect with the Union Pacific, provided either company should have the right, when the nature of the route on account of deep cuts and tunnels might require it for the expeditious construction of the road as a whole, to work not exceeding three hundred miles in advance of its continuous completed line.¹

Soon after the passage of the last mentioned act, and apparently with the same object of securing the speedy building of some line across the country, congress passed an act, approved July 27, 1866, for a new transcontinental road to be known as the Atlantic and Pacific. This line was to start from Springfield in Missouri and run by the way of Albuquerque in New Mexico to the head-waters of the Colorado Chiquito; thence as nearly as practicable along the parallel of thirty-five degrees north latitude to the Colorado river, and thence to the Pacific. The act was similar in many respects to the act incorporating the Union Pacific company. It incorporated the Atlantic and Pacific Railroad Company and, though it gave or rather loaned no bonds or credit as in the case of the Union and Central Pacific roads, it granted a right of way two hundred feet in width and the odd numbered alternate sections of public land within twenty miles on each side of the road, with a proviso that, if any of such sections had been already granted, reserved or otherwise disposed of, lieu lands in place thereof should be granted. And in the same act, it was provided that the "Southern Pacific railroad, a company organized under the laws of the state of California" and which had in fact been incorporated in 1865 to run through Santa Clara, Monterey, San Luis Obispo and other southern counties to Los Angeles and San Diego, and thence to the state line to connect with a road from the Mississippi river, should connect with the Atlantic and Pacific at such point on the state boundary line "as they should deem most suitable for a railroad

¹U. S. Stats. 1865-6, 79, 80.

line to San Francisco," and should have similar grants of land to aid in its construction.¹

In the year 1867, when it had become certain that the Central Pacific road across the Sierra Nevada was and would continue to be a success, a new company, organized for the purpose of building a railroad from Vallejo to Sacramento with a branch from Davisville to Marysville, became active. This was the California Pacific Railroad Company. Several companies had previously been organized to connect Marysville with San Francisco; and the new project was, so far at least as the Marysville branch was concerned, a renewal of the old enterprises. But the main object was to afford a substantially straight connection between San Francisco and Sacramento by means of steamboats to Vallejo and thence by rail to Sacramento and thus, by offering a much shorter, cheaper, quicker and more convenient transit than could be offered by the Western Pacific road, to attract all the traffic between San Francisco and Sacramento and in effect to become, instead of the Western Pacific, the main western link of the transcontinental line. It was therefore in direct opposition to the Central Pacific system; and the result was a fierce struggle to prevent its reaching Sacramento and especially to prevent its building a bridge at Sacramento. But, notwithstanding all opposition, the bridge was built; and in the early part of 1870 the California Pacific landed and took up passengers on the east side of the river. Under the circumstances, the only thing remaining to be done by the Central Pacific, which could not brook such interference with its business, was to buy out the California Pacific; and this was accordingly done in the summer of 1871—Milton S. Latham, president of the California Pacific company, selling out to Collis P. Huntington and his associates a majority of its stock for something over a million and a half of bonds with twenty years to run at six per cent per annum interest. Before the end of the year the California Pacific with all its connections and property passed into the hands and under the control of the Central Pacific company. And as a part of the same transaction the sale of the California Pacific transferred to the same Central Pacific com-

¹ U. S. Stats. 1865-6, 292, 299.

pany, which now began to be known sometimes as the "great absorber" and sometimes as the "great monopoly," a number of other projected roads and among them the California Pacific Extension and the San Francisco and North Pacific—the first of which was afterwards built from Napa Junction on the California Pacific road to Calistoga and became a part of the Central Pacific system, and the second of which, under the management and control of Peter Donahue, was built from Tiburon in Marin county to Ukiah in Mendocino county, with one branch to Guerneville and another to Glen Ellen in Sonoma county.

While many of these struggles were still pending and the Central Pacific was thus gradually absorbing the rivals, which encouraged by its success were springing up on every side, or in other words, like old Chronos, was swallowing the offspring that threatened to dethrone it, one of the most important questions for it and for the community remained unsettled. This was the matter of a terminus on San Francisco bay. At the beginning of its career, the Central Pacific or rather Stanford, its political manager at the Californian end of the line, failed in moulding San Francisco to his purposes. On the contrary the metropolis opposed him in many ways. Though it voted for the subsidy acts and thus to an extent gave the company credit and enabled it to get a start, the subsidies were not paid without long and bitter litigation; Stanford could not induce its capitalists to invest in his enterprise or subscribe to his stock; its officials as a rule were hostile to his advances, and its newspapers, though enthusiastic for a transcontinental road, were very decidedly opposed to the management and methods of the Sacramento company. Stanford appears to have felt personally aggrieved at this treatment and seems to have wanted to strike back. His associates, though to some extent they may have shared his feelings towards San Francisco, were too busy with their own departments to prevent a bitter quarrel which did the company no good, but on the contrary injured it by leaving even more lasting and harmful enmities than had already accumulated.

On March 28, 1868, the legislature by the procurement principally of Stanford passed an act granting to the Terminal Central Pacific Railway Company, which was in substance the Cen-

tral Pacific company under another name, for alleged proper depot and commercial facilities at the western terminus of the road, all the submerged and tide lands in the bay of San Francisco, commencing at a point four hundred feet northwest of the northwest point of Yerba Buena or Goat Island and running thence north twenty-two and a half degrees west one mile; thence due east three thousand nine hundred and sixty feet; thence southeast parallel to the first line to a point four hundred feet from the northeast point of the island, and thence parallel to and four hundred feet distant from the northern shore line of the island to the place of beginning, provided that the boundary line should not in any case pass the depth of twenty-four feet of water at low tide and that the tide-channel of four hundred feet next north of the island should always remain a free and open highway; and provided, further, that the land granted should not exceed for terminal purposes one hundred and fifty acres. Besides the right to reclaim, improve and use the land so granted, the company was also granted for bridge purposes a strip two hundred and fifty feet wide over the tide and submerged lands connecting the property with Oakland and the Alameda or Contra Costa shore. These grants were on condition that the bridges should have draws not less than sixty feet in the clear; that the terminal depot and station should be established on said land, which otherwise should revert to the state, and that the company should not receive any wharfage, dockage or other consideration for the loading or unloading of vessels, but that all wharfage and dockage should be subject to the laws and regulations established for San Francisco and to the jurisdiction of the state board of harbor commissioners. The submerged lands described were to be appraised by the governor and other state officers at their fair market value, but not less than three dollars per acre and were to be accepted and paid for and improvements commenced within one year from acceptance. Within two years thereafter, the company would have to expend in improvements, not including bridges, at least one hundred thousand dollars, and within four years have in full running order a first-class rail and ferry communication between San Francisco, the terminal lands described, Oakland and Vallejo; for the

fulfillment of which conditions within the time specified the company was to execute to the state a bond in the sum of two hundred and fifty thousand dollars.¹

In an act of the same legislature, approved March 30, 1868, appointing a board of tide-land commissioners for the survey and disposal of the salt marsh and tide lands of the state in the city and county of San Francisco, there was granted to the Western Pacific and to the Southern Pacific railroad companies respectively, for terminal purposes, thirty acres of submerged land in Mission bay south of Channel street and outside of the old red-line water front, together with right of way two hundred feet wide over state lands necessary for each such company to reach its terminus, provided the land did not extend beyond twenty-four feet of water at low tide nor within three hundred feet of the new water front line of the city in that section to be established. There were conditions of donation and clauses for forfeiture in some respects like those of the act for the Central Pacific terminus.² On March 31, 1870, the time limited for the improvements of the Central Pacific terminus was extended two years longer; and it was provided that the completion of a first-class road to a point on the Straits of Carquinez opposite the town of Vallejo should be construed the completion of such road to Vallejo within the meaning of the act of 1878. On April 2, 1870, the time limited for the improvement of the Southern and Western Pacific termini in Mission bay was extended eighteen months; and the locations made for such termini were approved.³

About the same time that the grant of submerged land north of Yerba Buena Island was made to the Terminal Central Pacific company, a corporation was organized under the name of the Oakland Water Front Company for the purpose of owning and controlling all the wharves and all the lands where wharves could be built on the Oakland water front. It was in fact a scheme for the benefit of the railroad. Its trustees were Horace W. Carpenter, Leland Stanford, John B. Felton, Edward R. Carpenter,

¹ Stats. 1867-8, 473.

² Stats. 1867-8, 718.

³ Stats. 1869-70, 624, 669.

Lloyd Tevis and Samuel Merritt. Its stock was to consist of fifty thousand shares, of which Carpentier was to own twenty-five thousand, Stanford twenty thousand and Felton five thousand. On March 31, 1868, four days after its organization, Horace W. Carpentier, who had been one of the first settlers in Oakland and had managed to become the owner of a large portion of its property and claimed to own, by a deed and contract from the city, all the lands in front of it between high tide and ships' channel, executed a conveyance to the company of all the lands referred to. On the following day, the Oakland Water Front Company agreed to convey to the Western Pacific Railroad Company, that being the company put forward for the purpose, four hundred acres of the most valuable portion of the water front; and the Western Pacific company agreed on its part, besides conveying to the city of Oakland certain wharf, dock and toll rights between Franklin and Webster streets, within eighteen months to extend and complete its road to and along the Oakland water front, and within three years to expend not less than five hundred thousand dollars in improvements thereon. This agreement, subsequently carried out, resulted in the building or completion of a road from Oakland to Niles on the Western Pacific main line; a road through Alameda to Haywards, and various improvements on the Oakland water front—all of which a year or two afterwards were conveyed over to the Central Pacific and became a part of its all-absorbing system.

While these arrangements were under way and Oakland in consequence was rapidly becoming a great city, a bill was prepared and introduced into the United States congress of 1869-70 for the avowed purpose of granting to the railroad the right to use Yerba Buena or Goat Island, which was government property. The railroad people claimed that it was the best, if not the only good, place where a terminus for the roads coming into Oakland could be built and insisted that, as it was so near to and legally within the limits of San Francisco, that city ought to be satisfied. But San Francisco was not by any means satisfied. On the contrary, it was greatly alarmed for the reason that it feared the real intention was, by leveling the island and constructing causeways to Oakland, to rear up a rival city on the opposite

side of the bay that would be in substance owned and its concerns managed by the railroad company, which was already too powerful. It was believed that the use of the island at all would be of great damage and that, if used as indicated, it would be fatal to San Francisco, which had already felt the effect on its commercial interests of the California Pacific terminus at Vallejo. The result was a controversy and quarrel, fanned by the newspapers, which became intensely virulent. The ire of the whole community became stirred up and at times threatened to break out into violence. But, by dint of a powerful struggle on the part of the city, the bill was defeated in congress and the excitement subsided, though, as before stated, not without leaving a popular feeling of resentment and enmity against the railroad and a desire to injure it upon any opportunity that might present itself. Some years subsequently, when the road extended its lines from Oakland to Port Costa and from Port Costa, by way of a train-carrying ferry across the Straits of Carquinez, to Benicia and thence by connection in nearly a straight line with the California Pacific road to Sacramento, and as a part of the same plan made a commercial shipping point of Port Costa, it was thought by many that it would have been better for San Francisco if that shipping point had been fixed on Yerba Buena Island. But the damage, if any, had been done; and it was too late for the city to alter and too useless to expend much regret over past acts.

The public antagonism to the railroad thus started and very unwisely not conciliated in its early stages, which by degrees grew into the nearly general public hostility afterwards known as the anti-railroad antipathy—one of the most powerful factors as will be seen in the subsequent political history of the state—was, however, comparatively mild as long as the transcontinental line was building and until after it was completed. The Central Pacific company, as has been shown, commenced to build early in 1863 and continued steadily at work, pushing on against many early discouragements, towards the summit of the Sierra Nevada. It had in fact built nearly fifty miles and got up above Clipper Gap in the summer of 1865, before the Union Pacific company on the eastern end of the transcontinental line commenced work.

That company had apparently waited, even after the passage of the new and essentially prodigal act of congress of July 2, 1864, for a year—by which time its managers had succeeded in calling into being the association, called “credit mobilier,” that afterwards became infamously notorious on account of its multiplied and unblushing corruptions. It was this institution, which however corrupt was at the same time wonderfully energetic and efficient, that constructed the Union Pacific part of the line. It had many obstacles to overcome, notwithstanding the greater part of its route was over comparatively level plains; but when it started it forged ahead, regardless of expense, with very great rapidity. After the passage of the act of congress of July 3, 1866, giving each company the distinct right to run ahead until it met the other, it was of course seen that the one that built the fastest would secure the most of the lavish money, lands and credit of the government. Both companies appreciated the situation and girt up their loins for extraordinary efforts. The managers of the Central Pacific about this time, for the purpose of keeping pace in progress with the credit mobilier, organized themselves into the Contract and Finance Company, which succeeded the firm of C. Crocker & Co., and undertook to push ahead with even greater impetus than before. This it was well enabled to do, because it had passed the mountains, leaving a good road behind it and reached the nearly level country that extended all the way to Salt Lake. And now commenced a race in railroad building the like of which had never been seen before.

In 1867, when the Central Pacific had got across the Sierra and reached the state boundary line one hundred and forty miles from Sacramento, the Union Pacific had constructed about five hundred and fifty miles over the plains of the Platte. In 1868, the Union Pacific built four hundred and twenty-five miles and the Central Pacific three hundred and sixty-three. In 1869, when the roads approached each other near Salt Lake, the strife became exciting. The Union Pacific had built nearly twice as much in length as the Central Pacific and was grading as far west as Humboldt Wells, two hundred and twenty miles west of Ogden, though there was a considerable part of its line in the mountains east of Ogden which was not finished. This

apparent progress alarmed many of the railroad men; but Huntington from Washington wrote back to go right ahead as rapidly as possible towards Ogden, without reference to what the Union Pacific was doing—only to be careful to leave a good and completed road behind them. Acting on this advice Crocker, who was the head and superintendent of the Contract and Finance Company and had under him some ten thousand first-class laborers, most of whom were Chinamen, pushed on with redoubled vigor. He even sent graders east of Ogden; filed a map of his proposed extension in that direction, and alarmed the Union Pacific people, who were already astonished that the Central Pacific had managed to get across the Sierra Nevada in the face of the enormous difficulties it had to contend with. As a matter of fact, however, the Central Pacific was only striving to reach Ogden and make the junction there. In the effort to reach that point, the Contract and Finance Company, under the tremendous driving power of Crocker, accomplished an extraordinary amount of work and on one occasion the astonishing feat of building ten miles of railroad in a single day. Under the circumstances the roads soon met, or rather ran past each other. For a while there was a dispute as to the point of meeting; but facts showed that it was at Promontory, about fifty-three miles west of Ogden. The Union Pacific up to that point had built during the year about one hundred and seventeen miles, while the Central Pacific had to the same point built about one hundred and eighty.

All the work done by the Union Pacific west of Promontory, consisting of long lines of graded embankments near and parallel with the Central Pacific and estimated to have cost about a million of dollars, was wasted; as was also the work, comparatively inconsiderable in quantity, done by the Central Pacific east of Promontory. While the place of meeting was still in dispute and the point of junction unfixed, the Central Pacific, which wanted the junction at Ogden, proposed to purchase the rights of the Union Pacific west of Ogden; but the Union Pacific declined to sell. The matter, however, was settled by congress, which by joint resolution, adopted on April 10, 1869, fixed the common terminus of the two roads at or near Ogden, and directed that the Union Pacific should build and the Central

Pacific pay for and own the road from the common terminus to Promontory summit, where the rails should meet, connect and form one continuous line.¹ Like everything else done by the Central Pacific company in the moulding of legislation, the settlement of this controversy showed the management of a master hand. As a matter of fact the point of junction "at or near Ogden" turned out to be about five miles west of Ogden; but this part of the line was in a short time acquired by the Central Pacific, which thus secured all the advantages and enjoyed all the conveniences of running to Ogden, the business center of Utah and the Salt Lake region. As the whole distance by the road from San Francisco to Omaha was eighteen hundred and seventy-two miles, the establishment of the point of junction at Ogden made the Central Pacific road eight hundred and thirty-three and a third miles and the Union Pacific one thousand and thirty-eight and two-thirds miles.

It was determined that the ceremonies of the meeting of the two roads at Promontory should be, as far as possible, worthy of the occasion—one of the most important in the history of the United States. The time fixed upon was May 10, 1869. There were about a thousand persons present, consisting of all the officers, directors and employees of the roads that were within reach, including laborers, together with many prominent men and a few ladies who had been invited, delegations from Salt Lake City and surrounding towns, several companies of soldiers, a military band and a number of Indians. The place was a grassy plain between green hills with the Great Salt Lake not far off to the south and with mountains, some nearer and some further and many capped with snow, in various directions to the east, north and west of it. In the middle, between the last rails of the Union Pacific on the east and the Central Pacific on the west, there was a short unclosed gap. About eleven o'clock in the forenoon, everything being prepared for the celebration, a Central Pacific train of cars, drawn by a decorated locomotive, all of which had come from the Pacific coast, approached the gap from the west; and about the same time a Union Pacific train with its equally decorated locomotive from the Atlantic coast approached

¹ U. S. Stats. 1869, 56.

from the east. As the engines came up, each a ponderous and powerful structure made for scaling mountains and with a whistle that was heard for miles and waked echoes in the furthest mountains, they saluted. It was the salutation, the all-hail of the Orient and the Occident in the middle of the continent. Soon the passengers, pouring from the trains on each side, gathered around the gap; and the last tie was produced. It was from the west and consisted of a beautifully polished stick of Californian laurel, bearing in its center a plate of silver on which were engraved the names of the two companies and their officers. It was soon put in place under the ends of the last rails, which were drawn together and fastened; and the connection was complete with one exception. This was the last spike. It too was soon produced. Like the last tie it also came from the bounteous west. It was of solid Californian gold.

But little time was lost in placing the last spike in position; and it was driven home with a hammer of solid silver in the hands of Stanford, the president of the Central Pacific. Then followed a few addresses, including a prayer, cheers, music and the reading of numerous congratulatory telegrams, which came flashing over the wires from the far east and the far west, as the news of the driving of the last spike spread. Again the engines saluted; the officers and guests of the Union Pacific boarded their cars; and their train passed over the connecting tie, pressed the Central Pacific rails and then retired back upon its own track. The Central Pacific train in the same manner ran over upon the Union Pacific rails and then back to its own track. The union was complete; the east and west had embraced, and the two lines had become one continuous road across the continent in its widest breadth. Before the sun sank, there was banqueting and feasting—the best that could be afforded on the trains—and the day ended with more saluting, more cheering and more rejoicing, which were repeated in nearly every city of the eastern states and in every city, town and village of the Golden West.

CHAPTER VII.

BOOTH.

IT is perhaps impossible to adequately estimate the importance of the opening of the transcontinental railroad to California and the Pacific coast. It was the golden chain that bound them indissolubly with the east and with civilization on both sides of the Atlantic. It had always from the beginning been, and was still, immensely popular with the mass of the people. And it would seem that it ought to have continued, and with judicious management and without loss or any great loss of profit might have continued, popular. But for various reasons, which by degrees became the subjects of much discussion, crimination and recrimination, the antipathy already noticed increased and at length grew into a powerful factor in state politics. If the railroad had only moderately succeeded, and still more if it had proved in any respect a failure, the result would have been different; but its unprecedented and unparalleled success, besides calling out what was regarded as pride and insolence in some of its officers, produced in the commencement a general feeling that the government had been inconsiderate in giving it more than it really needed, and that instead of being, as was intended, a mere agent and trustee for the commonweal, it had become a powerful corporation, practically independent of the government and with no thought except for its own interests.

On the other hand, the railroad claimed that it had complied strictly with its engagements and adhered closely to the terms of the contract which the government had made with it. If that contract had been inconsiderate, it was not the fault of the railroad. If it had received large subsidies, it had incurred great risks that no one else was willing to undertake and had overcome great obstacles that would otherwise have been insuperable. If

it had become wealthy, it was because it had created the wealth by furnishing a highway for the nation and making the desert and the wilderness valuable. If it had borne down opposition and competition, it had done nothing more than was necessary to secure its own success, nothing more than business principles required and nothing more than was customary in the conduct of affairs over the whole world. If its officers manifested undue pride or rendered themselves disagreeable or obnoxious, it was not the fault of the railroad but of the persons themselves or of the weakness of human nature. But all these reasons and arguments had little effect when it was seen that the Central Pacific and Western Pacific companies, which together were only a little over eight hundred and thirty miles in length and cost not above forty millions of dollars to build, had already received or were to receive in lands and subsidies from the United States, the state and various counties, in addition to their remunerative freights and fares, an amount far exceeding the cost of the road and by some estimated at many times as much, and that they had absorbed or were absorbing all the other lines and transportation of any value on the Pacific coast.

The mutterings of the anti-railroad feeling, which though sometimes heard were comparatively tame and harmlessly remonstrant until a year or two after the driving of the last spike, towards the end of Haight's administration grew into a political storm. Haight, as has already been stated, was renominated by the Democrats for the office of governor. Their state convention that put him forward for the second time met in the assembly chamber in Sacramento on June 20, 1871. In a letter written shortly before nomination, among the usual category of Democratic doctrine, he had expressed his opinion on the railroad question by speaking of the "profligate grants of the public domain to corporations, regardless of the rights of settlers;" and the convention, repeating the same words, charged that these profligate grants had been made by "the radical majority in congress" and that they were "a fraud upon the people of the country."¹ But however decidedly anti-railroad Haight and his supporters thus, towards the end of his four years' term, expressed themselves, they

¹ Davis' Political Conventions, 296, 299.

were apparently not sufficiently decided to suit the popular will; and it was reserved for an altogether different man—a man of great intellectual force and a brilliant orator, who made his opposition to the granting by government of any subsidies to railroad corporations the principal issue of the campaign—to win the gubernatorial fight and lead the Republicans back to victory. This was Newton Booth. He was a native of Washington county, Indiana, born December 30, 1825. He had been educated at Asbury College, where he graduated in 1846, was admitted to the Indiana bar in 1849, and arrived in California October 18, 1850. After a short residence in Amador county, he located in Sacramento in February, 1851, and engaged in a large and prosperous mercantile and grocery business. Though more or less absorbed in extensive trade, he found time to read extensively, to study history, politics, poetry and general literature and to cultivate his oratorical powers, which were by nature of a high order. He had a pleasant, well-modulated voice and, though rather under the average in size, he was acceptable in appearance and graceful in action. He had occasionally delivered addresses in public, chiefly literary in character; but gradually, as he was an ardent Union man and Republican, he began to make political orations and soon became noted as one of the most effective public speakers in the state. In 1862 he was elected state senator from Sacramento county, and served in the legislature of 1863.

Early in 1871, on account principally of his antagonism to the railroad and the strong and increasing popular feeling in the same direction, he became prominent as the Republican candidate for governor. In the national campaign of 1868, which resulted in the election of Ulysses S. Grant as president and Schuyler Colfax as vice-president of the United States and carried the state of California for them, though by a very small majority, he had done yeoman's service. He was a man of activity as well as ability and in his career from the start preserved his character for integrity. When the Republican state convention met at Sacramento on June 28, 1871, it appeared that the only other person, who had been proposed for the office of governor, was Thomas H. Selby of San Francisco, who had also expressed

himself as opposed to subsidies and, in so far at least, as anti-railroad; but he had no following and was withdrawn. Booth was nominated without opposition, with Romualdo Pacheco for lieutenant-governor. In its platform the convention, besides indorsing Grant and his administration and the course and career of the Republican party and also giving expression to its approval of the common school system and its opposition to the Chinese, pronounced the subsidizing of railroads or other private corporations by grants of public lands or taxation in any form as contrary to sound maxims of government, productive of gross corruption and abuse and a plain invasion of the rights of the citizen. It went further and, as the supreme court of the state had decided in favor of the constitutionality of the subsidy laws, it demanded an amendment to the constitution preventing the enactment of such laws for the future and the immediate repeal of the "five per cent subsidy law" that had been passed by the last legislature. It charged the recent Democratic administration with "scandalous abuses of power" and specified as some of the instances of it not only the "palpable and wanton violation of the plain provision of the constitution by the infamous enactment commonly known as the lottery bill," but also its "measureless subserviency to a corrupt lobby evinced by numerous profligate grants of subsidies to railroad companies," which, it affirmed, amounted to four millions of dollars and afforded convincing proof of its "apostasy to all the pledges upon the faith of which it had been elevated to power."¹

The election took place on September 6, 1871, and resulted in a complete victory for the Republican ticket. Booth was elected by a vote of about sixty-two and a half thousand over fifty-seven and a half thousand for Haight. Pacheco was elected lieutenant-governor over E. J. Lewis, the Democratic candidate, by about the same vote; and the entire Republican ticket, with one or two exceptions, was successful. At the special judicial election, held on October 11, 1871, the Republican triumph was still more pronounced—Augustus L. Rhodes, the Republican candidate for justice of the supreme court, receiving nearly forty-seven thousand votes as against less than thirty-seven thousand for Selden

¹ Davis' Political Conventions, 303-308.

S. Wright, the Democratic candidate.¹ These votes, indicating a revulsion of public feeling since the previous elections, showed that there was for some reason very great dissatisfaction. The after-effects of the wave of popularity that carried Grant into office may have had something to do with the change; and possibly some of the weaknesses that were supposed to mark Haight's administration may have had their effect; but the main cause seems to have been antagonism to the railroad and the belief that Booth and his party were more solid and sincere in their opposition to it than their opponents. Nearly all the old political issues had been settled; and, though stump speakers on one side might once in a while wave the bloody shirt and those on the other declaim against the equality before the law of the negro with the white man and paint in dark colors the horrors of threatened amalgamation, little attention was paid to subjects which had been threshed over and over so many times. There was in fact no matter of general concern in which the people of California took a deeper interest in those years than the opposition that had been provoked amongst them against what they termed the giant monopoly.

On December 7, 1871, the legislature met and the next day Booth and Pacheco were inaugurated. Upon being sworn in, Booth delivered his inaugural address, which, as was to have been expected, was an able and scholarly production. In giving his opinion about legislation, he said, "One of the most philosophical and correct thinkers of modern times has affirmed that the wisdom of the legislature is oftener shown in the repeal of old statutes than in the enactment of new." He said further that "the most necessary laws will often confer incidental personal advantages;" but, he continued, "there is one test, however, which should be applied to every measure of legislation:— is the general good the object and incidental advantage the necessary incident? or is incidental profit the object and the general good the incident or pretext?" Government was only the agent of the people for specific purposes; it should never attempt to do for the people what they could as well do for themselves; and, having nothing of its own to bestow, it could not give to

¹ Davis' Political Conventions, 311, 312; Senate Journal, 1871-2, 97.

one without taking from another. The law of compensation was inexorable, and in political economy it would be forever true that to seek a partial good was to incur a general evil. He believed that law should be the simplest possible expression of the necessities of society and that there should be uniformity in the operation of the general law; but that every county, city and town should be self-governing in everything concerning its local affairs and of special application, with proper restrictions against the creation of debt, the appropriation of money to private enterprises and the levy of excessive taxes.¹

In the same spirit, he discussed the subject of revenue and taxation and gave his reasons why he opposed subsidies to railroad and other corporations. He recommended the immediate repeal of the "five per cent subsidy law" as demanded by the express pronounced will of the people at the recent election, and added that the necessary steps should be taken to amend the constitution so as to prevent any more such legislation. He deemed the regulation of fares and freights of great importance in view of the tendency of railroads to consolidate and become monopolies, and then passed to the abuses of corporate power in general. "It is not uncommon," he said upon this subject, "to find one class of stockholders enriching themselves from a company, which impoverishes another. So common is this, especially with mining companies, that it has become proverbial and grown into a distinct and disgraceful code of morals, one of whose tenets is, that to own a majority of stock or a controlling interest is equivalent to owning it all. No stockholder should ever be allowed to hold any interest in a corporation, which is distinct from and may become antagonistic to the interest of the company as a whole. The attempt to do so, on the part of any officer of the company, should be regarded as a breach of trust, and so punished. And the organization of corporations within corporations," he subjoined, evidently referring to the Contract and Finance Company of the Central Pacific Railroad Company, "is a refinement of subtlety and fraud, which should be positively prevented by law."²

¹ Senate Journal, 1871-2, 107, 108.

² Senate Journal, 1871-2, 113.

Speaking next of the American system of free schools, he said it was "one of the most beneficent outgrowths of our history." In some other countries education was as general and as free; but in none was the principle so well recognized that independent manhood was an object of greater solicitude than a powerful state; that man should be educated for his own sake; that he was higher than the state, and that society and law were valuable only as they enabled him to become more a man. He maintained, therefore, that the right of every child to an elementary education was as sacred as his right to air and light, and that to deprive him of it was to deprive him of the sixth sense of civilization. Turning next to the rights of colored children to be educated, he said: "All badges of distinction that are relics of the slave-holding era of our national history should pass away with the system they commemorate. Until the state graduates penalties, it cannot justly graduate opportunities. The doors of our schools should be open to all, with no prejudice of caste without and no sectarian teaching within which will prevent any child from freely entering." He next spoke of the compilations of statute laws known as the codes, prepared by a commission appointed by his predecessor, and said that he had united with his predecessor, subject to the approval of the legislature, in naming two prominent members of the bar to revise them. He was in favor of a reapportionment of the state for legislative and congressional representation. At the same time he said there were too many elections; that the separate judicial elections were productive of additional expense without corresponding benefit, and that the time of elections should be changed so as to correspond every fourth year with the presidential election and in all cases from the odd to the even years. He recommended the repeal of what was called the "litigant organ act"—a statute passed in the interest of a Sacramento partisan newspaper at the last session of the legislature—which required the appointment of a "state paper" at the seat of government and the printing in it of all official notices of state officers and legal notices to non-resident parties.¹ He said that such a law removed a certain class of public service from the healthy test of general competition, to

¹Stats. 1869-70, 510.

that extent created a monopoly, and was besides a premium on servility and a discrimination against the freedom of the press.¹

On the subject of Chinese immigration, he said that it cheapened labor and made feasible many branches of industry that could not otherwise be prosecuted; but, that cheap labor and the immediate development of the material resources of the country were the highest objects to be considered might well be questioned. It might be true, in a large sense, that the interests of capital and labor were the same; but in practice each was prompted by self-interest and availed itself of the other's necessities; and any system that introduced a class of laborers whose wages were exceptionally low gave capital an advantage; and, in so far as it had a tendency to establish a fixed line of demarcation between capital and labor and create a laboring caste, it was a social and political evil. But however this might be and whatever course of action the federal government, which had exclusive control of the subject of Asiatic immigration, might take in relation to it, there was but one thing to do in reference to the Chinese or any other people already within the borders of the state, and that was to afford them full and perfect protection. "Mob violence," he continued, "is the most dangerous form in which the law can be violated, not merely in the immediate outrage committed, but in the results which often follow:—communities debauched, jurors intimidated, and courts controlled by the political influence of the number that are guilty. The unsuccessful prosecutions for the crimes of a mob teach that the number and boldness of the perpetrators too often give immunity to the offense; and not only is the crime unpunished, but justice is mocked in her very temples by the erection of a tribunal higher than the law. And when, to all this, banded ruffianism selects for its victims a race notoriously defenseless; when pillage and murder are its exploits, the race from which such wretches are recruited, the community which suffers such deeds to be enacted, the officials who stand supinely by without an effort to prevent the crime, are sharers in a common disgrace; and the statute, which prevents the victim from testifying, becomes party to the offense. I trust that during my administration the spirit

¹ Senate Journal, 1871-2, 114, 115.

of lawless violence, which has sometimes disgraced our past, may never be exhibited. Should it be, there will be no exertion spared on the part of the executive to extend to all, from the humblest to the highest, the sovereign protection of the law and to visit the guilty with the punishment their crimes deserve."¹

Previous to the inauguration, which took place on Friday before the legislature in joint convention, the senate had adjourned until the next Monday; and on that day Romualdo Pacheco took his seat as president of the senate. Under ordinary circumstances and according to the usual rules of parliamentary bodies, he would have had the appointment of committees and in that way have wielded considerable influence. But as it happened, not only did the Democrats have a majority of the hold-over senators, who had been elected in 1869; but the majority of the Republicans among the new senators, elected in 1871, was not sufficient to overcome it. The Democrats, having a majority of two, had the control and, being unwilling to allow Pacheco as a Republican the power of appointing committees, they on December 7, the day before the inauguration, prevented it from passing into his hands by adopting a rule, that all committees of the senate and all joint committees on its part should be appointed by the senate. It was on this account that nearly all the chairmen of committees in the senate and a majority of the members were Democrats, and that the chair, instead of being generally filled by Pacheco, was usually occupied, with his consent, by James T. Farley, who had been elected by the Democrats president pro tempore. Afterwards on March 13, 1872, near the end of the session, being convinced that the Democratic senate got along much better with its Democratic president pro tempore than with its Republican president, he asked and was allowed leave of absence from the state for sixty days, of which he took advantage.²

Notwithstanding the Democratic majority in the senate, the Republicans had a majority of over two to one in the assembly and of course a decided majority in joint convention. This told in the election of a United States senator for six years to succeed

¹ Senate Journal, 1871-2, 115, 116.

² Senate Journal, 1871-2, 26, 119, 539, 540.

Cornelius Cole, whose office was to expire on March 3, 1873. According to the law of congress of July 25, 1866,¹ each house of the legislature was to hold an election for Cole's successor on the second Tuesday after the organization of the legislature. On Tuesday, December 19, 1871, accordingly, the houses respectively held their elections. Previous to this time, as may well be imagined, there had been controversies, contests and caucuses in both parties on behalf of the respective candidates for the office which had always been looked upon as the most important in the gift of the state; but they had all settled down upon Aaron A. Sargent of Nevada county on the part of the Republicans and William T. Wallace of Santa Clara county on the part of the Democrats. The vote in the senate was twenty-one for Wallace and eighteen for Sargent; in the assembly, fifty-four for Sargent and twenty-four for Wallace. There being no election of the same person by both houses, they met, according to the provisions of the act, in joint convention at noon the next day, when Sargent was elected by seventy-two votes over forty-six for Wallace.²

On January 27, 1872, the Republican assembly adopted two joint resolutions for the ratification of the fourteenth and fifteenth amendments to the constitution of the United States. There was no necessity for this action, as the amendments had been adopted by a sufficient number of states without California and were already an integral part of the constitution. But it was thought proper that California, which had previously in Haight's time rejected them, should now withdraw from the position then taken and join in their ratification. The resolutions were accordingly transmitted to the senate. That body, however, did not manifest any favor to the provisions against which the Democracy as a party had always declaimed. It referred them to its committee on federal relations, composed of three Democrats and two Republicans; and that committee held them without a report until the end of the session.³ In reference to another measure of the Republican assembly, being a bill for the repeal of the "liti-

¹ U. S. Stats. 1866, 243.

² Senate Journal, 1871-2, 139-151.

³ Senate Journal. 1871-2, 282, 283, 747.

gant organ act," referred to by Booth in his inaugural and which was in fact designed for the benefit of a Democratic newspaper in Sacramento, the senate acted differently. On the first vote it rejected the repeal act, but afterwards on reconsideration passed it by a vote of twenty-four to fourteen; and a few days afterwards it was approved by the governor. Another act—also passed at the previous session of the legislature, of much the same nature and nearly as objectionable, called "an act to protect litigants," but which referred only to the publication of legal notices in counties¹—was also in much the same manner repealed, though some of the Democratic senators, as in the other case, made strenuous efforts to retain it on the statute-book. The Mercantile Library lottery act, another vicious legacy of the session of 1869-70, though it had already accomplished its harm, was likewise repealed.²

The next matter of special interest in the legislature was the reception of the Japanese embassy. This consisted of Iwakura, junior prime minister, envoy extraordinary and minister plenipotentiary of Japan, and four or five other Japanese officials of high rank, accredited by their government to the so-called treaty powers, who were on their way to Washington. Their object was to negotiate on the subject of commercial relations; and it was deemed of the highest importance to treat them with distinguished consideration. Their company, including secretaries and attendants, numbered forty-four persons. They were accompanied by Charles E. De Long of California, the United States minister to Japan. On February 1, 1872, upon the announcement of their presence, the senate postponed other business; invited them to seats within its bar, and listened to an address by De Long, who had been asked to speak upon the subject of his mission. Upon their withdrawal, a resolution offered by Edward Tompkins was unanimously adopted, welcoming the minister and the embassy and expressing a hope that their coming might be the harbinger of a commercial intercourse that would add largely to the prosperity and happiness of the people of both countries.³

¹Stats. 1869-70, 435.

²Senate Journal, 1871-2, 168, 210, 337, 338, 931.

³Senate Journal, 1871-2, 285.

They next visited the assembly and were received with equal respect.¹ But there was a sequel to the visit. A few days afterwards, Charles Maclay of Santa Clara introduced into the senate a concurrent resolution in reference to the payment of the expenses of the joint committee of the two houses which had been appointed to invite the embassy to the capital, of which he had been chairman. In reply to this, Henry Larkin of El Dorado demanded a bill of items of the expenses incurred. Maclay submitted an account, which proved to be a bill of the Orleans Hotel against the Japanese embassy for two thousand dollars, of which six hundred dollars were for De Long, his family and attendants; two hundred and fifty dollars for carriages; three hundred dollars for wine, eight hundred dollars for a banquet and fifty dollars for cigars. The matter being referred to the committee on contingent expenses, it reported that there was nothing in the resolution of invitation authorizing the joint committee to incur any expense, and that the bill presented was a hotel bill, not charged against the committee and not for any expenses connected with the reception of the embassy. But the senate as a whole, taking a different view of the subject, ordered the bill paid; and the assembly concurred.²

It was at this session of 1871-2 that the various codes or compilations of the statute law of California, which had been prepared in part by a commission appointed in 1868 and in part by another appointed in 1870 and revised by still another commission appointed in 1871, were received and adopted. They were divided into four parts and introduced as separate acts—first the penal code on February 5; next the code of civil procedure on March 6; the political code on March 8, and the civil code on March 15, 1872. In accordance with provisions inserted in the codes themselves, they were not to take effect until January 1, 1873; but, on account of an opinion on the part of the legislature that certain portions should be put in operation before that time, separate acts were framed for that purpose.³ These codes in general consisted of compilations of the statutes then in force,

¹ Assembly Journal, 1871-2, 356-358.

² Senate Journal, 1871-2, 307, 309, 330, 376.

³ Hittell's Codes and Statutes, 15046-15101.

with amendments and improvements in arrangement. This was notably the case with the penal code, the code of civil procedure, and the political code. Among the improvements was a quiet one, allowing Indians and Chinese to testify in the courts the same as whites and blacks. The civil code, on the other hand, with the exception of the parts taken in substance from the statutes of California, was a copy of the draft of a civil code, prepared by a commission, at the head of which was David Dudley Field, for the state of New York but never adopted by that state. Taken altogether, they were an improvement on the statute law as it existed; but in many respects they have had to be, and will yet have to be, greatly amended before they can be called excellent.

An unusual complication of circumstances was brought to the attention of the senate on February 16, 1872. On June 30, 1864, congress had granted the Yosemite valley to the state of California to be held by it for all time in inalienable trust for public use, resort and recreation. The grant was on condition that it should be accepted on the terms mentioned. This acceptance afterwards in 1866 took place; and a commission was appointed, consisting of the governor *ex-officio* and other persons, to administer the trust.¹ Some six months prior to the passage of the act of congress but while the matter was pending, James M. Hutchings, A. G. Black and J. C. Lamon went into the valley, settled on the choicest portion of it and claimed pre-emption rights to one hundred and sixty acres each. Hutchings appears to have purchased, though he could not have given much money for, the dwelling house or rather shanty of some previous settler, and, with his family, took up his residence there and entertained visitors to the valley. The others seem to have built their own shanties and also entertained. As a matter of law, they acquired no valid rights by their settlement; and Hutchings and Lamon seem to have recognized this fact by applying to the legislature of 1867-8 for an act granting them the lands settled on. A bill for that purpose, which however was not by its terms to take effect until it should be ratified by congress, was introduced into the assembly and passed both houses. It was vetoed by

¹Stats. 1865-6, 710.

Governor Haight, and then regularly passed by both houses over his veto. But, though thus passed, for some reason or other, the act was never properly authenticated or published and did not appear in the statute-book. No notice was taken of the matter at the next session of the legislature; but at the session of 1871-2 an investigation was ordered, which took place and showed that the act, though on file in the office of the secretary of state, did not have the proper certificates of its passage over the governor's veto. So far as the act itself was concerned, it perhaps made little difference, as congress had not ratified it and doubtless never would ratify it; but the circumstances indicated a loose and careless, if not worse, method of doing legislative business, which might in some cases have occasioned great trouble.

Meanwhile, the Yosemite commissioners had soon after their appointment in 1866 commenced an action against Hutchings and the others to eject them from the valley. The Hutchings case was tried in the district court in Mariposa county and resulted in favor of defendant. An appeal being taken by plaintiffs, the supreme court of the state reversed the judgment and ordered the court below to enter judgment just the other way, ejecting defendant.¹ From this last judgment, Hutchings sued out a writ of error to the supreme court of the United States and about the same time, in connection with Black and Lamon, applied to the legislature of 1871-2 for payment of what he called their equitable claims. A bill to that effect passed the assembly; but in the senate the committee on finance, to whom it had been referred, reported against it for the reasons, among others, that so far at least as Hutchings was concerned it was useless because he had demanded over sixty thousand dollars for his individual claim and refused to take less, and because the writ of error, under which he persisted in his claim to the land, was still pending; and, if he won and got the land, he could certainly not ask any relief from the state. It therefore recommended rejection of the bill; and the recommendation was adopted. And thus for the time the matter ended.² But Hutch-

¹Low vs. Hutchings, 41 Cal. 634.

²Senate Journal, 1871-2, 356, 371, 471, 486, 506.

ings, right or wrong, had no idea of giving up; and, at his instance, a new bill was introduced and passed at the next session of the legislature, purporting to be for the indemnification of bona-fide settlers on the Yosemite grant, adding the name of Ira B. Folson to the other three and appropriating sixty thousand dollars to pay all the claims—which seem in the meanwhile, and after Hutchings' writ of error failed, to have been considerably reduced. Subsequently Hutchings, who had for decades talked and written about the great valley and assisted in making it famous, was for several years appointed guardian by the Yosemite commissioners, and still more recently the state legislature adopted a concurrent resolution intended to allow him the use of his old cabin and five acres of orchard around it for ten years.¹

Railroad questions, which had absorbed so much attention in previous years, did not play much of a figure in the legislation of 1871-2. A bill, introduced in the assembly, was passed to extend the time for the Terminal Central Pacific Railroad Company to expend one hundred thousand dollars and comply with the conditions of the grant made to it in 1868 of submerged lands northwest of Yerba Buena Island. Booth, however, vetoed it; and, when the veto message came up in the assembly for consideration, it was sustained by a vote of seventy-four to one.² Much of the time of the session was in fact taken up in considering Booth's numerous vetoes; and, as it proved, he was sustained in every case. One was a bill to establish a college at Santa Rosa in Sonoma county, which was objectionable as a special law prohibited by the constitution; three to allow leave of absence to the superintendents of common schools of Sutter and Shasta counties and the district attorney of Tehama county; another to authorize the Central Pacific Railroad Company to construct a bridge across the Sacramento river at Tehama without a draw: in all these, the vetoes were sustained unanimously.³ Vetoes were also sustained to a bill in relation to making tax-deeds evidence in Yuba county; to a bill to erect booms in Kings river, as not sufficiently guarded; to a bill for the relief of

¹ Stats. 1873-4, 523; 1895, 449.

² Assembly Journal, 1871-2, 798, 897-899.

³ Senate Journal, 1871-2, 420; Assembly Journal, 1871-2, 325, 334, 374, 484.

James R. Traverse to get back money paid on a forfeited recognizance; to another for the relief of purchasers of state lands; to two bills authorizing elections for relocating the county seats of Alpine and Kern counties; to another for the relief of the sheriff of Trinity county, who had been fined for violating a law of congress; to another to amend an act for the regulation of sailor boarding houses, and another to pay damages caused by cutting Second street through Rincon Hill in San Francisco.¹ A veto of an act relating to railroads in Sonoma county was overruled by the assembly; but the senate laid the whole matter on the table.²

An interesting bill was introduced into the assembly at this session, by Obed Harvey of Sacramento, for the encouragement of the fine arts. It was referred to a special committee, consisting of himself, W. A. Aldrich and E. B. Mott, which reported that it should not pass for the reason that the treasury was not in condition to make suitable appropriations for the purposes designed. At the same time, they said they did not want to discourage the advancement of the fine arts. "We desire," they continued, "to see our capitol at some future time adorned with choice works of art, both in painting and sculpture, depicting scenes to which our people can point with pride as suggestive of the history and natural wealth and beauty of our state. In order that we may secure such, we recommend that a plan may be perfected by which the field may be open to competition and afford liberal encouragement to the California artists of ability." Mott had previously at the same session distinguished himself by another report. The Rev. Hiram Cummings had in some way managed to get himself appointed to the useless position of chaplain of the assembly, but did not receive the pay he seems to have considered his services worth. He therefore presented a petition asking "the same compensation that is paid to a copying clerk" or, in other words, eight dollars per day. The matter was referred to the committee on claims, of which Mott was chairman; and he reported back that "in view of the fact that all the members of the assembly were familiar with the facts of the

¹ Assembly Journal, 1871-2, 586, 654, 677, 708, 896, 897, 912, 913, 921.

² Assembly Journal, 1871-2, 575, 663; Senate Journal, 1871-2, 563.

case" and that his committee was "not exceptionally qualified to pass upon the efficiency and relative value of prayers," it declined to make any recommendation.¹

On April 1, 1872, the legislature finally adjourned. Thomas B. Shannon, the speaker of the assembly, in his valedictory remarks—constituting the swan-song of the session—said that some of the determinations of the houses had not seemed to meet with universal approbation; but he believed experience would demonstrate that no positively mischievous or oppressive measure had passed into statute law. On the other hand, he thought much good had been done. But there was one thing he could not help reprobating and that was the "selfish and narrow spirit which combined to defeat a new legislative apportionment." He evidently referred to the Democratic senate, which, he said, had manifested a disposition to cling to power by refusing to apportion the state in accordance with the great changes in wealth and population, that had taken place in the agricultural and commercial centers of the country, while in the other sections the reverse was the rule. He charged that such action was "to deny the right of representation;" that it was "the assertion of the right of taxation without representation;" that it was "indirectly the revival of colonial subordination;" that "no free and intelligent people will submit to so plain and palpable an outrage," and that "time will avenge this gross wrong."²

Such were the main legislation and legislative occurrences of the session of 1871-2; but several trials by jury, which took place in San Francisco about the same time, may be said to have made, or at least declared, more positive, more important and more far-reaching law in their special directions than the statutes. One was the so-called Hawes' will case. Horace Hawes, one of the acutest lawyers, most successful business men and ablest legislators the state has ever known—famous as prefect in 1849 and still more so as assemblyman in 1856 and senator in 1863-4 and 1865-6, and author of some of the most beneficent legislation of California including the San Francisco consolidation act and the state act for the registration of voters—died on March

¹ Assembly Journal, 1871-2, 561, 594, 887.

² Assembly Journal, 1871-2, 948.

12, 1871, at the age of fifty-eight years and in the possession of a fortune estimated at over a million of dollars. He left a widow, whom he had married in 1858, after he had acquired his property, and two children, a son aged twelve and a daughter aged seven years. In October, 1870, he had made a deed of a valuable block of land in San Francisco in trust for the establishment and maintenance of a Chamber of Industry and in February, 1871, a deed of "Redwood farm" in San Mateo county and other property in trust for the establishment and maintenance on Redwood farm of an institution of learning—where law, medicine, agriculture, mechanic arts, commerce and the fine arts were to be taught in the most comprehensive manner possible—to be known as "Mont Eagle University." These two deeds comprehended the most of what he had; but they were filled with many reservations and conditions and, among others, some that rendered them subject to subsequent testamentary disposition. On March 2, he made his will—in substance confirming his deeds, but charging the so-called university property with inalienable annuities of twenty-five hundred dollars per annum to his wife for life, thirty-six hundred dollars per annum to his son after his majority for life, and one hundred dollars per month to his daughter until twenty years of age and afterwards three thousand dollars per annum for life. In addition, he made bequests of some fifteen or twenty thousand dollars to other relatives and gave to his son his library and personal property. It was evidently the will of a man who supposed he had a right to dispose of his own estate as he deemed proper, and who thought it would do more good as he devised it than to be spent otherwise.

Unfortunately for Hawes, he was a very outspoken man and quarreled with a great many persons, not excepting his wife, against whom he seems to have taken a particular dislike. He was excessively economical, in some respects parsimonious, and naturally felt a horror at the way in which he saw fortunes, earned by long and anxious care, dissipated by prodigal and spendthrift heirs and especially by parasites that hung round them. Though polite and gentlemanly with gentlemen, he often used language more forcible than elegant of those with whom he

quarreled and particularly of those who he thought were trying to cheat him. He frequently felt, on account of his disagreements with others, lonely and isolated—as if nearly everybody were his enemy and trying to injure him. But after he had made his will, supposing he had circumvented them by placing his property beyond their reach, he exclaimed, “When the damned vampires gather around me after I am gone, they will find nothing but dry bones.” To this unhappy disposition, which made him miserable, there was joined in him a very high estimate of his own greatness. Though recognized as a bright and resourceful lawyer and an incorruptible legislator, he did not think his brilliancy, ability and integrity of purpose were sufficiently appreciated. He had an idea, not altogether incorrect, that in his sharp and crabbed way he said some very smart things and that his sayings would be or ought to be collected and would be admired by posterity. On one occasion, when he read of a public dinner presided over by a governor where mutual-admiration healths were drunk and everybody was as usual filled with pudding and praise, he threw the newspaper down in disgust and remarked that he had never heard of Jesus Christ or himself being toasted at such dinners. But the most suggestive exhibition of his weakness in this respect was a clause in his will, by which he directed that his body, after being buried at Mont Eagle, should be covered with a very thick block of Scotch granite and that “no other monument shall be built to my memory there or elsewhere until the expiration of one hundred years from the time of my decease.”

Upon his death, his will was contested by his wife; and the case was tried before the probate court of San Francisco, commencing November 14 and ending December 2, 1871. It was submitted to the jury mainly on the question as to whether Hawes was of sound and disposing mind when he executed it. Able attorneys were employed on both sides; but the contestant had the advantage of much popular sympathy on behalf of herself and children and of great popular prejudice against Hawes. Though no sane person could for a moment really believe him to have been insane, still the jury was induced to return a verdict that he was not of sound and disposing mind, thereby defeating the will; and the Chamber of Industry and Mont Eagle University fell with

it. The community was not surprised, and no one found much fault. Notwithstanding the jury may have been very stupid and the verdict was regarded as false and untrue, it was generally acquiesced in; and it began to be understood that under circumstances at all similar the result, with almost any jury, would be the same. In other words, it made no difference what the law of the statute and books was, there was a higher law that a man could not leave his property as he pleased, unless he did so in a manner to suit the popular notion of the fitness of things.¹

The other trial was that of Laura D. Fair for the murder of Alexander P. Crittenden. The accused was a handsome and attractive woman, widow of a state senator. She had been for some time living in criminal relations with her victim. The latter, a brilliant and prominent lawyer, having a wife and family of good social standing, at length tiring of the meretricious connection, attempted to break it off. On the evening of November 3, 1870, on the return of his wife from a visit to the east, he met her at Oakland and took the ferry-boat to return with her to San Francisco. Soon after leaving the wharf, while he was sitting on an outside seat of the boat with his wife and several of the family by his side, Mrs. Fair came up, muffled, and, stepping in front, drew a pistol and shot him dead. Being arrested on the spot, she was soon indicted. There were two trials—both in the fifteenth district court in San Francisco. The first, which was in April, 1870, resulted in her conviction; but on appeal the supreme court reversed the judgment. On the second, which took place in September, 1872, she was acquitted. The defense was insanity; but, as her condition was certainly not insanity in the ordinary and usually accepted significance of that word, it was called "emotional insanity." Notwithstanding the facts seemed to show a deliberate, well-planned and carefully-executed scheme of homicide, the jury deliberately seized upon the plea of emotional insanity for the purpose of expressing its opinion that a woman should not, under the circumstances, be punished for killing a man even with malice aforethought. However plainly against the written law the verdict was and however stupid or corrupt the jury may have been to render it,

¹ Horace Hawes Will Case, San Francisco, 1872.

there was not a great deal of public reprobation. On the contrary, a very wide-spread opinion was that a man in Crittenden's condition in life, who would meddle with a woman as he did with Mrs. Fair, should do it at his own risk; and, if she killed him, no verdict against her should be adduced in justification or excuse of his conduct. In other words, there was in such cases a higher law, superior to the written statute, and against which instructions and charges of courts were in vain.¹

Various reasons contributed to make the Fair case one of very great public interest. At the time of the homicide there was much excitement, which continued, with some intermissions, until the end of the second trial and acquittal of the accused. By that time, the more absorbing subject of a presidential election had come up and soon crowded it entirely out of thought. Almost immediately after the adjournment of the legislature of 1871-2, preparations began to be made for the next presidential campaign by the selection of delegates to the national conventions. That of the Republican party was held at Philadelphia on June 5, 1872, and resulted in the nomination of General Grant a second time for president of the United States, and of Henry Wilson for vice-president. But previously, on May 3, another convention had been held at Cincinnati, by what purported to be a new political party calling itself "Liberal Republican," which endeavored to forestall any enthusiasm for Grant by the nomination of Horace Greeley, editor of the New York Tribune, who had helped build up the Republican party but was then opposed to Grant and seemed willing, for reasons deemed satisfactory to himself, to wreck the structure he had spent so many years in erecting. The candidate for vice-president, nominated with Greeley, was B. Gratz Brown of Missouri. On the other hand, the Democrats, who were genuine Democrats and believed in maintaining their party organization, held a convention at Baltimore and nominated Charles O'Connor for president and John Quincy Adams for vice-president. As a matter of fact, the so-called Republicans, who nominated Greeley, and the so-called Democrats, who did not join in nominating O'Connor, had coalesced in support of a principle, commonly known as "anything to beat

¹ San Francisco newspapers of September 30 and October 1, 1872.

Grant;" and the combination, which it produced in California, including as it did a number of the most violent or at least noisiest Republicans and at the same time a number of the most violent Democrats that had ever been known in the state, presented a spectacle truly unaccustomed.

The election took place on Tuesday, November 5, 1872, and resulted in the choice of the Republican electors by a vote of about fifty-four thousand against forty-one thousand for the Greeley electors and one thousand for the "out-and-out" Democrats; and it was soon known that the Republicans had been successful throughout the Union and Grant re-elected. At the same time, three Republicans, Charles Clayton, Horace F. Page and Sherman O. Houghton and only one Democrat, John K. Luttrell, were elected from California to congress. But this great triumph for the Republicans was soon followed in California by the formation of a new party—a sort of abnormal and eccentric growth, which, though it made great noise for a time and seriously threatened the Republican party upon whose body it preyed, had no inherent strength and did not last long. This new movement originated principally in the organization of a number of clubs of dissatisfied farmers in different parts of the state, whose object was to discuss their grievances. These clubs, finding that for various reasons they could not accomplish their purposes by open meetings, instituted or joined a secret order, known sometimes as "Patrons of Husbandry" but more commonly as "Grangers," which extended its organization throughout the state and for a period exerted very considerable influence upon politics. Its chief matters of complaint against the existing order of affairs, and against both the main political parties as responsible therefor, were excessive rates of railroad freights and fares and prodigal expenditures of public money. It maintained that railroad corporations, being the creatures of statutory law and deriving their powers therefrom, should be under the control of the legislature; that the maximum rates of freights should be so fixed by statute as to prevent extortion and leave producers a margin of profit on their productions; that way-freights should be charged only in proportion to distance and at no greater rate than through-freights; that such railroads,

built by the money of the government, as would not reduce freights in accordance with the foregoing principles, should be operated by the government in the interest of the people rather than by private persons for personal aggrandizement, and that it would cast its votes and use its influence for such candidates for the legislature only as would carry such views into effect. It also proposed the utilization of state prison labor in the production of grain sacks for home consumption, to be sold to farmers at cost; the preparation of plans for a co-operative bank; the establishment of a co-operative system for the sale of agricultural supplies, and the providing of storage for grain which would enable it to be retained until it would bring the highest price.¹

It seems plain, even from the above brief statement of their main purposes, that the Grangers could not constitute a successful political party. They had grievances and doubtless meant well enough; but they did not propose to look out for any interests except their own; and, by not regarding the interests of others, they could neither properly understand nor appreciate their own. They did not base themselves upon or advocate any broad principles of general application; and they never had any great or even moderately great leaders. They did not even have men properly qualified to formulate and forcibly urge their principles, such as they were; and, as to those principles, there was great diversity and independence of opinion. In their narrow sphere they could stick together, but in other respects there was no political cohesion amongst them. In fact one of their principal purposes, frequently put forward in their platforms, was, as above stated, to stand between the Republican and Democratic or other great parties, and wield the balance of power by throwing their influence in favor of one or the other as their interests might dictate. Such in a few words was the organization among the farming part of the community, provoked into existence mainly by the railroad that began to make itself felt in the latter part of 1872. It could hardly be called much of a political party of itself; but, in the campaign of 1873 for members of the legislature, it joined the anti-railroad portion of the Republican party

¹ Davis' Political Conventions, 321-323.

that trained under the leadership of Governor Booth and formed the new party referred to, which, on account of its heterogeneous constitution, parti-colored complexion and unusual make-up, was nicknamed and generally known as the "Dolly Varden" party.¹

Booth's ambition at the time was to become United States senator as successor to Eugene Casserly, whose term was to end in March, 1875; and his main object in the campaign of 1873 was therefore to secure votes favorable to his candidacy. As has already been shown, he was a pronounced opponent to the railroad and carried solidly with him all the anti-railroad elements of the Republican party. The Grangers could very well join in a movement to make so able and effective an enemy of the railroad United States senator and at the same time secure legislators pledged to anti-railroad legislation. The campaign was well planned, well carried out and eminently successful. Though the other parties ran tickets and great efforts were made by each of them to gain the favor of the growing and already formidable Granger power, and though it was endeavored in various ways by the formation of new combinations to turn the tide, it made no difference. Nothing could stem the Dolly Varden flood. It gathered strength as it swept along. Among other things, it offered an opportunity for those misguided Republicans, who had followed the ignis fatuus of Liberal Republicanism under the leadership of Horace Greeley and thereby substantially identified themselves with the Democratic party, to get back into what was still Republicanism—though called by another name—under the leadership of Newton Booth. It also attracted and carried along with it all the dissatisfied, or what were commonly designated the "disgruntled," elements of the other parties. And the result was that the Dolly Vardens, to the surprise of nearly everybody except those thoroughly acquainted with the inconstant and mercurial character of what may be called the uncertain or floating vote of California, carried the election of September 3, 1873, in many parts of the state, and secured a majority which made Booth's election to the United States senate a matter beyond peradventure.

For the judicial election of 1873, which was to take place on

¹ Davis' Political Conventions, 323, 324.

October 15, the Republicans had nominated Samuel H. Dwinelle as justice of the supreme court to serve out the term made vacant by the death of Justice Royal T. Sprague. The Democrats had nominated Samuel B. McKee for the same office. And so the contest stood up to the September election, when the Dolly Varden triumph suggested the formation of a permanent new state party under Dolly Varden control and the nomination of a candidate for the vacancy on the supreme bench. The result was the organization of what was called the People's Independent party; the hasty calling of a judicial state convention, which met at Sacramento on September 25; the adoption of a platform which was mainly directed, in addition to anti-railroad declamation, to strictures against party corruption and protests against party fealty, and the nomination of E. W. McKinstry for justice of the supreme court. The election, like the previous one, was carried by the whim, hurrah or excitement of the hour—whatever may be the correct term to use for so sudden and ephemeral a phenomenon—and with even greater majorities. McKinstry received nearly twenty-six thousand votes as against about twenty thousand for McKee and a little over fourteen thousand for Dwinelle.¹ But the excitement of these contests and the prestige of Dolly Vardenism itself died out almost as rapidly as they had risen; so that there was very little of them left even when the next legislature met on December 1, 1873. Though Booth, as will be seen, managed to secure his election to the United States senate, the Dolly Varden or People's Independent party played but a small figure and, besides, kept continually diminishing; and most of those, who had received its votes, as well as those who had given it votes, drifted off into affiliations with their old parties.

While politics were thus engrossing the attention of a portion of the public, a great and very important invention and improvement in city passenger transportation was being worked out in San Francisco. The development of the street railroad system of that city, which superseded the use of omnibuses about the year 1863 as has been seen, met with serious obstacles in the numerous hills and steep grades, which could not practically be surmounted by the ordinary horse-cars that were successfully used

¹ Davis' Political Conventions, 325-335.

on the more level grounds. As much of the most desirable residence property was on the heights, and particularly those hills that overlooked the magnificent scenery of the bay and afforded views of the Contra Costa range and the purple peaks of Tamalpais and Monte Diablo, it became a problem how to get up and down them cheaply, speedily, conveniently and safely. Among the first whose attention was directed to the subject was A. S. Hallidie of San Francisco, manufacturer of wire rope, who appears to have been for some time engaged in devising modes of transporting materials over mountain roads by means of continuously-running cables. If any such device should be used in a city, it would of course be necessary to prevent any material obstruction of the street for ordinary travel and enable the vehicles, used with it, to be moved up or down at a sufficient rate of speed, and at the same time to be stopped at any moment and in any part of the line as might be desired. The first difficulty would be overcome by sinking an endless, or in other words a circuit of continuously-moving, cable under-ground, and the second, by some kind of a grip that would catch or let go the cable at any point and run with it at full speed or any less rate as might be wished. Several contrivances for utilizing cables and grips had been devised by other persons; but the exact thing for the purpose of a steep street railroad in a city remained a desideratum.

About the beginning of 1872, a number of citizens including Hallidie, Joseph W. Britton, Henry L. Davis and others were interested in a project to run a railroad of some kind from the business portion of the city up Russian Hill. It appears that at first a road for horse-cars was contemplated; but Hallidie was still revolving the idea of a cable in his mind. About the same time, a skillful civil engineer, named William Eppelsheimer, who had been recommended to him by Irving M. Scott—afterwards the head of the Union Iron Works and the builder of some of the largest and most efficient government war vessels afloat—was engaged by Hallidie; furnished with his ideas about a cable road; instructed in what was to be accomplished, and set to work on the details. Like most other inventions of the kind, valuable suggestions were made by different persons; Britton seems to have had something to do with the manner of using

the cable; others also dropped hints that were turned to account; but it was chiefly Hallidie, aided however to some extent by Eppelsheimer—who became superintendent of construction and chief engineer of the road—that was entitled to the credit of conceiving and solving the problem of how to use the cable and make it practicable. Even after the plans were all worked out, it was some time before the public could be made to believe in the system. It was easy for anybody to suggest difficulties, and some of them seemed very serious. But notwithstanding everything that could be said, the projectors, after convincing themselves, no longer hesitated. They started at once to build a double railroad track, with an underground trench in the center of each pair of rails, connecting with the surface by a continuous very narrow open slot, all the way on Clay street from Kearny to Jones; stretched their wire cable on rollers in it so that there would be a descending cable under one track and an ascending cable under the other; erected a powerful engine with a drum to drive the cable at Leavenworth street, and built a number of cars in such manner that each could be attached to the cable by a steel bar passing down through the slot and having at the lower end a grip so arranged with rollers that it would catch and hold or release the cable or let it slip through the rollers as might be desired, and also having a contrivance at its upper end in the car, worked by a wheel and double screw, to open or contract the grip at will. At each terminus of the line there were turn-tables; and the whole was so constructed that the bars, running down through the slot and connecting cars with grips, were to be carried along and have unobstructed play through the whole length of the line up and down and around from one track to the other at the termini.

It was on June 2, 1873—for it took some time to work out all the details—that ground was broken for the new road. But when a start was made, construction was comparatively rapid. The distance from Kearny street to Jones was about twenty-eight hundred feet, and the summit at Jones street was three hundred and seven feet above the level of Kearny. On August 2, 1873, the road was completed to Jones street and several cars

were run up and down. It then being determined to extend the cable system five hundred feet further to the stationary engine house at Leavenworth street, some further delay occurred; but by the beginning of September, 1873, the line opened for general traffic and proved to be a great success not only in a mechanical but also in a financial point of view. On account of this success, it did not take long for other roads of similar character to start; they were found to be quite as available for level ground as for steep grades; and various improvements were made from time to time—one, for which Asa E. Hovey is entitled to the credit, being the use of a comparatively simple lever for working the grip instead of the complicated double screw before mentioned. In the course of a few years, cable roads were running in almost every direction not only in and about San Francisco but in many other cities and towns of California and also in cities of other states and countries. They could be worked more economically than horse railroads, and with much greater speed and more satisfaction to the public. And there can be no doubt that they would have been extended and improved to a much greater extent, if it had not been for the extraordinary development of electric roads for city as well as country purposes, and for ascending steep grades as well as for level running, which have substantially superseded the cable lines and are now the roads of the day.

CHAPTER VIII.

BOOTH AND PACHECO.

THE legislature of 1873-4 organized by electing Democratic officers in the senate, with William Irwin at the head, and mixed officers in the assembly with Morris M. Estee as Dolly Varden speaker, chosen only after a long and bitter contest and by the majority of a single vote. Immediately upon its organization on December 5, 1873, Booth presented his biennial message. He thought he had reason to congratulate the people on the general good condition of affairs. He called attention to the fact that while in former years property had been assessed at different rates in different parts of the state, varying from as little as fifteen per cent of actual values in some quarters to as much as eighty per cent in others, the state board of equalization, recently organized, had brought about more uniformity and in doing so had raised the assessment roll of the state from about two hundred and sixty-seven millions of dollars in 1871 to about six hundred and thirty-seven millions in 1872. This amount, however, included assessments for solvent debts, which had in April been decided by the supreme court to be unconstitutional for the reason that it was double taxation; and the assessment roll of 1873 had therefore, by striking out such solvent debts, been considerably reduced but still amounted to upwards of five hundred and twenty-seven millions of dollars and nearly twice the amount of 1871. He stated the amount of the state debt, other than the school and other bonds held by public institutions, to be a little over two and a quarter millions of dollars. But when he came to speak of the indebtedness of the various counties of the state, he showed that their funded debts amounted to more than seven and a half million dollars, and declared that

it was "so heavy a burden as to threaten the bankruptcy and practical dissolution of the county governments" and to present "the most gloomy outlook of the financial future of the people of the state and the most difficult one for the legislature to deal with." He also directed his scrutiny to various extravagances in public expenditures—to which additional force was given by the fact, called the day before to public attention, that each member of the last senate on an average had been furnished with one hundred and eighty dollars and seventy-four cents worth of stationery—and he called for retrenchment, and again retrenchment, and still again retrenchment, wherever it could be practiced. And as a move in that direction, he recommended that the state should "discontinue appropriations to institutions not under her control, and that no appropriations should be made in aid of private societies, to promote special interests, or for bounties or subsidies."¹

He also called attention to the fact that all the public lands, given for school, seminary and public building purposes, had been sold—though there remained a question as to whether or not the United States had by its cession of such lands relinquished its rights to whatever mines of precious metals might be in them. He seemed to think it questionable whether the United States intended to convey the mines in school sections. On the other hand, the swamp and overflowed land had been ceded to the state in trust for the purposes of reclamation, and it never would, and never was intended to, yield revenue. As to all the land in the state in general, it was to be observed that a very great deal was held by a very few persons. One single individual had three hundred and thirty-four thousand one hundred acres; while one hundred and twenty-two persons together owned five million three hundred and forty-seven thousand four hundred and sixty-four acres, and no one of them less than twenty thousand acres. He stated the number of school-children, at the time he spoke in 1873, to be one hundred and forty-one thousand six hundred and ten, of whom twelve and a half thousand attended private schools and ninety-seven thousand were enrolled in public schools, though only seventy-one thousand of the latter attended

¹Senate Journal, 1873-4, 44, 52-57.

with sufficient regularity to be considered pupils. He was of opinion that education should be compulsory; believed in the employment of teachers trained to the business; considered the ordinary and common practice of examining teachers by rignma-role questions absurd, and repeated, what he had said in his inaugural, that the words "white" and "black" should be stricken from the school laws and that black children should have an equal right with white children "to a fair start in the race of life." He announced as a very interesting fact—and what was also a very important one—that the University of California had on July 6, 1873, taken possession of its permanent site at Berkeley on the western slope of the Contra Costa mountains—whence, as the Athens of the Pacific, it looks down upon a busy highway of nations and is kept cool and pure by the salt sea-breezes of a limitless ocean.¹

Though he still continued, as he had done in his inaugural, to favor the abolition of the death penalty, he gave no reasons for his sentiment in that respect; but it was evident that he had no sympathy with crime as such. He mentioned the fact that John J. Marks of San Francisco, one of the board of state harbor commissioners, had been charged with embezzlement in his office; proceeded against both civilly and criminally, and forced to resign, which he did on February 4, 1873; that Jasper O'Farrell, his colleague, though not charged with crime, had resigned on March 4, 1873, and that since that time the receipts from the board had increased about two hundred and forty dollars a day—and the tone, in which he collocated the facts, indicated that Marks, with all the money he was charged with taking and all the influence he might have been able to bring to bear, would have utterly failed in securing executive clemency from him. It was one of the great faults of the governors of California from the start, that they too often neutralized the expensive efforts of the courts to punish crime; and Booth himself, in the more than one hundred instances in which he exercised the pardoning or commuting power, doubtless too often allowed his sympathies or the persuasions of his friends to carry him beyond the dictates of good judgment. An act of April 4, 1864, requiring the gover-

¹ Senate Journal, 1873-4, 60-73.

nor to grant pardons on the recommendation of the state prison directors in certain cases,¹ and a subsequent act of March 9, 1868, authorizing the legislature to recommend pardons to the governor,² were in part responsible for this apparently wholesale pardoning business; yet, making all allowances for these acts, there still seems to have been entirely too much interference with sentences imposed after long and expensive trials in the courts. But, however this may be and whatever the case as to other governors, Booth at least was never charged with any greater offense than the failure to persist in saying the "no," which in the greater number of such cases is a positive virtue.³

Booth pronounced the geological survey of the state unsatisfactory, and in effect recommended the abolition of the commission and depositing what was left of the survey in charge of the University. Under his chilling remarks, the geological survey and other correlated work stopped; and they have never as yet been resumed. On the other hand, he used or rather repeated terms of extravagant and indiscriminating praise in reference to the codes, which had been adopted at the previous session. It appeared that, at the suggestion of the justices of the supreme court, he had in the spring of 1873 appointed Stephen J. Field, Jackson Temple and John W. Dwinelle to revise the codes. They reported to the governor, and he reported to the country, that the codes were "perfect in their analysis, admirable in their order and arrangement and furnishing a complete code of laws—the first time, we believe, that such a result has been achieved by any portion of the Anglo-Saxon or British races." At the same time, he proceeded to speak of the numerous defects that had been found by his own revisers in what had thus been pronounced so perfect and admirable; and it may be added that before the end of the session the changes were so numerous that it became necessary to publish an extra volume of statutes devoted exclusively to "amendments to the codes." Similar extra volumes of "amendments to the codes" were published for several succeeding sessions; and to this day great changes are

¹ Stats. 1863-4, 356.

² Stats. 1867-8, 116.

³ Senate Journal, 1873-4, 77-79.

constantly being made—showing that the state is still very far from having a “complete code of laws.”¹

Such were some of the main subjects treated and enough of the manner of treatment to indicate the general spirit of Booth's message. There was generally speaking no topic of interest omitted. He knew that it was going to be his last formal message on the condition of the state, as well as his first one; and he elaborated and polished it with great industry and care, making a very full and in many respects able state document. Meanwhile he was not inattentive to his ambition for the United States senate. It was doubtless in bad taste for a governor to be scheming for the United States senate; it was in fact a difficult, if not an impossible thing to be at one and the same time a first-class governor and a first-class candidate for the United States senate. But Booth had precedents, such as they were; and he did not hesitate. In the meanwhile, Eugene Casserly, the United States senator whose term of six years was to expire on March 3, 1875, and whom Booth desired to succeed for a full term, had become thoroughly sick and tired of the office and on November 28, 1873, resigned—leaving an unexpired term of a little over a year; and this had to be filled by the legislature of 1873-4 as well as the succession to the full term. The matter came up in the respective houses, in accordance with the act of congress, on December 16, 1873. In the senate, for the full term, Booth, Dolly Varden, James T. Farley, Democrat, and James McM. Shafter, Straight Republican, received each thirteen votes; in the assembly Booth received forty-three votes to twenty-eight for Farley and nine for Shafter. For the unexpired term, in the senate, John S. Hager, Democrat, received eighteen votes; Jesse O. Goodwin, Dolly Varden, eight; Cornelius Cole, Straight Republican, five; while in the assembly Hager had thirty-two, Goodwin ten and Cole eighteen. There being no choice by both houses, the matter came up in joint convention on December 20, when Booth was elected for the full term by a vote of sixty-one to thirty-seven for Farley and twenty for Shafter; and on December 23, Hager was elected to the unexpired term by a vote of fifty-five as against twenty for Thomas H. Laine and thirteen for Shafter.²

¹ Senate Journal, 1873-4, 80-83.

² Senate Journal, 1873-4, 141, 268.

Notwithstanding his election to the United States senate, Booth did not give up the office of governor; but on the contrary he retained it until he was ready to proceed to Washington and take his seat in congress. In the meanwhile, directly after the election, Philip A. Roach, partly in expression of his own opinion and partly in expression of that of others, introduced into the senate a proposed amendment to the constitution to the effect that the governor should be ineligible to the office of United States senator, or any other elective office, during the term for which he should have been elected governor. This amendment, though only in part adopted by the legislature, seemed so proper under the circumstances that it played a part in the reasons for calling a new constitutional convention—the question for which was ordered to be submitted to the vote of the people at the next election.¹ In addition to the call for such election, the legislature of 1873-4 approved a great number of proposed constitutional amendments and recommended them to the next legislature;² but nothing of importance in relation to any of them was done until the general overturn and upsetting of nearly everything that had been established in the state, which was accomplished by the adoption of the new constitution in 1879.

A few days after the senatorial elections, a corresponding editor of the San Francisco Daily Evening Post, named A. D. Bell, published in his newspaper a report that the final vote of Selden J. Finney, joint-senator from San Francisco and San Mateo counties, which after having been thrown a number of times for Shafter was changed to Booth, had been "influenced by the receipt of a specific sum." When asked for his authority for making such a charge of corruption, Bell refused to reveal the name of any originator of the report or where he had heard it. Thereupon, on motion of David Goodale, a resolution was adopted by the senate to the effect that Bell was himself responsible for the authorship of the charge, and that he should be expelled from the reporters' desk in the senate chamber. At the next meeting, however, the resolution of expulsion was, on motion

¹Senate Journal, 1873-4, 204, 827; Assembly Journal, 1873-4, 698; Stats. 1873-4, 732.

²Stats, 1873-4, 913-937.

of Farley, reconsidered by unanimous vote; and the subject matter referred to a special committee, which subsequently reported, as a summing up of the whole business, without a word about the author or the truth of the report, that the publication was injudicious; that the action of the senate was hasty, and that the reconsideration of the vote of expulsion was prudent. It thereupon recommended that the resolution of expulsion should be rejected. This report was adopted; and there the Bell business dropped.¹ In the assembly, somewhat similar proceedings took place in reference to an individual named Charles P. Converse. He had made a statement that he could for money control the legislature. This seems to have so distressed the assembly that it at once issued a warrant and had him arrested. A committee, appointed to investigate the subject, reported that Converse had made the statement attributed to him but had not influenced any member, and had merely attempted to speculate on his charges of corruption. As a caution, however, to be more careful for the future, he was adjudged guilty of contempt and sent to jail for six days. Soon afterwards another committee of the assembly, appointed to look into the charges of bribery and corruption in the United States senatorial contest, reported that no money had been used for the election either of Booth or Hager, and in effect that everybody was pure and no one guilty—all of which appears to have been entirely satisfactory to those concerned.²

It was, perhaps, not an unusual thing to find a number of able men in a legislature, and at the same time to find that they had little or no influence; but in this respect the legislature of 1873-4 was prominent. As an instance, there was a very able and statesmanlike report in the senate by Thomas H. Laine against giving a state annuity to John A. Sutter, with abundant reasons why, however kind Sutter may have been to the early immigrants, the state could not properly become an almoner and had no right to dispose of money collected to carry on the government by giving it to any person, and especially to single out a particular person for bounty when there were others equally entitled to it. But these wise words had no apparent influence; and a new act passed

¹ Senate Journal, 1873-4, 298, 300, 328.

² Assembly Journal, 1873-4, 1002-1091.

and was approved, giving Sutter two hundred and fifty dollars per month for two years out of the state treasury, and at the same time providing that the warrants issued to him should not be assignable.¹ A like bill, equally objectionable for the same reasons, though perhaps the object of the bounty was quite as deserving and much more needy, gave to James A. Marshall, the discoverer of gold, one hundred dollars per month for two years and made warrants in his favor unassignable.² Another very able report was made in the senate by William T. Graves, John J. De Haven and Thomas H. Laine against the closing of certain streets, in the line of improvements of San Francisco, for the making of a race-track and the convenience of certain sporting men interested in the fashionable dissipation of horse-racing. But notwithstanding the best of reasons against it, the bill passed and was approved, and the streets were closed for more than twenty years. In the senate also, cogent reasons were given against a bill, which had been presented, ordering the courts of the state to dismiss any indictments found in them against Henry Meiggs, the famous fugitive from justice, who had made a great fortune in South America and seemed desirous of revisiting the scenes of his early adventures. It was plain that such a statute would be an unwarrantable interference by the legislature with the judicial department and clearly unconstitutional; but the legislature seemed determined to pass it, and did so. Booth vetoed it, and in his veto message repeated the objections to it; but the legislature was still determined and passed it over the veto.³ As has already been stated, however, Meiggs was wise enough to remain in his South American home.

In the assembly there were likewise some able reports at this session. One was in reference to the new city hall of San Francisco, which had been commenced in 1870 and had already cost unconscionable sums and was destined to cost many times more than the work upon it was worth. The report exposed much expensive carelessness; but the business went on after the report about the same as it had gone on before. Up to

¹ Senate Journal, 1873-4, 304; Stats. 1873-4, 105.

² Stats. 1873-4, 517.

³ Senate Journal, 1873-4, 462-465, 837, 838; Stats. 1873-4, 192, 749.

this time, it has cost five millions of dollars, though in many respects not well suited for its purposes, and it is still unfinished. Another was in regard to the so-called "governor's mansion," erected on the state capitol grounds at Sacramento at a cost of about sixty thousand dollars, which it pronounced "a huge failure" and characterized as "a gilded monument to public extravagance and folly."¹ Still another report, and one of great although painful significance, was by F. S. Freeman, chairman of the committee on ways and means, on the practicability of reducing appropriations for incidental expenses in the several public offices. He said it was impossible, for the reason that officials, and the legislature as well, had become accustomed to an extravagant style and lavish expenditure, customary in aristocratic governments and to a certain extent sanctioned or at least tolerated by the public, which could not, under ordinary circumstances, be resisted. There were some indications in recent elections, he seemed to think, that the baneful public sentiment alluded to was being succeeded by a wholesome determination to check official extravagance. But that was a matter rather to be hoped for than expected. The administration of public affairs had advanced very far from the days of that true economy and light taxation which should characterize a republican government. "Thomas Jefferson," he said, casting his eyes back on the early history of American politics, "when inaugurated as president of the United States, rode on horseback to the front of the capitol, hitched his horse—without the aid of lackey or stirrup-holder—mounted to the place of inauguration, and, standing there in the plain costume of a refined gentleman, took the oath of office and entered upon the duties of his high position in a manner which can not but challenge the admiration of all who deplore the gaudy parade and pompous extravagance of a presidential inauguration of to-day." A more hopeful report was in relation to progress made at the state university at Berkeley; and in the same connection it may be added that the legislature passed an act prohibiting the sale of intoxicating liquor within two miles of the university grounds.²

¹ Assembly Journal, 1873-4, 599-602, 1095.

² Assembly Journal, 1873-4, 635, 1165-1168; Stats. 1873-4, 12.

The anti-railroad sentiment, which had not diminished since Booth's election, manifested itself at this session by the repeal of the various statutes, known as the "five per cent subsidy acts," authorizing counties to subscribe for the construction of railroads to the extent of five per cent of the assessed value of property within their boundaries.¹ There was considerable discussion as to railroad freights and fares, but nothing of importance was accomplished. One bill on the subject, introduced in the assembly by J. W. Snyder of Mariposa county, was on motion of John F. Swift, chairman of the committee on corporations, stricken from the records as "an insult to the people of the state of California."² There was also an attempt to stir up the subject of land monopoly and the stupendous frauds said to have been perpetrated in reference to the subject; but it likewise ended in nothing. Another matter of importance, which had attracted much public attention and was made the object of some investigation at this session, was the law's delay or, in other words, why litigants were subjected to such long and seemingly unnecessary delays in the trial and decision of their causes in the various courts of the state. But as the committee, which had the matter in charge, referred the subject to the judges of the city and county of San Francisco, against whom the chief complaints were made, and accepted their statements in explanation of the delays complained of, it could not be expected that much progress would be made; and it is not to be wondered at that there was none at all. The subject of woman suffrage also received some attention; but the joint committee of both houses, to which it was referred, made a report, more amusing than instructive, stating that it had not deemed it necessary to recommend an amendment to the constitution allowing women to vote, for the reason that there was likely before very long to be a constitutional convention and that the "committee anticipate many good results therefrom."³

Booth's vetoes at this session, though not so plentiful as at the last, were, with the exception of the Meiggs matter already

¹ Stats. 1873-4, 26.

² Assembly Journal, 1873-4, 881, 1219.

³ Assembly Journal, 1873-4, 615, 1067, 1210, 1220.

noticed, quite as successful. One was to a senate bill designed to create a new county, to be called that of Vallejo, by a division of Solano county. Booth called attention to the fact that it was the first time an attempt of the kind had ever been made against the unanimous wish of the people of the county. His veto was sustained in the senate by a vote of twenty-four against eleven.¹ He also vetoed an assembly bill, which purported to regulate the hours of labor of street-car conductors and drivers. The law as it stood was that eight hours of labor should constitute a day's work, unless otherwise expressly stipulated by the parties to a contract. The act in regard to street-car conductors and drivers provided that twelve hours should constitute a day's work and that they should be entitled to recover a dollar an hour for every additional hour they might be required to work. Booth in his veto message remarked that the act proceeded upon the theory that all men of lawful age were competent to make their own contracts for wages and hours of labor, except insane persons and street-railroad conductors and drivers. He then went on to point out the impracticability and absurdity of the law and in fact of all legislation of the same general character. And his veto was sustained by a vote of thirty-nine to thirty-two.²

On February 27, 1875, five days before his term as United States senator was to commence, Booth resigned his office of governor and Romualdo Pacheco, the lieutenant-governor, took his place and was sworn in. Pacheco was a native Californian, born at Santa Barbara on October 31, 1831, and the son of that Romualdo Pacheco who lost his life in the struggle, already related, between the troops of Governor Victoria and Pablo de Portilla respectively, near Los Angeles in December, 1831. He received his early education in part from private tutors and in part from a school at Honolulu in the Hawaiian Islands. As he grew up, he devoted some attention to nautical matters along the southern coast; but his chief pursuits were connected with the business of stock-raising, in the various branches of which, particularly horsemanship and the use of the reata, he became an expert and acquired a frame of great strength and agility.

¹ Senate Journal, 1873-4, 828, 829.

² Assembly Journal, 1873-4, III4, III5.

He more than once assisted in capturing bears, sometimes grizzlies, with lassoes alone; and, by constant out-door exercise and the avoidance of intemperance in the fashionable vices of the day, he grew to be a fine specimen of physical vigor and one of the most promising of the native Californians of Spanish blood. In 1857, at the age of twenty-six years, he was elected senator for Santa Barbara and San Luis Obispo counties and served in the legislatures of 1858 and 1859. In 1861 he was elected again to the same office and served in the legislatures of 1862 and 1863. In 1863 he was elected state treasurer for four years. In 1869 he was again chosen senator for Santa Barbara and San Luis Obispo counties and served in the session of 1869-70. In 1871 he was elected lieutenant-governor for four years; and on February 27, 1875, on the resignation of Booth, as already stated, he became governor and continued to be so until the end of that year, when William Irwin was inaugurated.

Pacheco as governor did not have much opportunity to distinguish himself or make an exhibition as to what kind of metal he was composed of. No legislature sat during the nine or ten months he held office, except the day or two previous to Irwin's inauguration in December, 1875; and no public disturbance or political climax occurred to call him out. Almost all his official occupation was confined to holding matters, as far as possible, in the condition of peace and prosperity in which he found them; in looking after the general administration of routine executive business, and in considering the numerous applications for pardon that take up a large part of every governor's time. It can not be said that he did not grant more pardons than he ought to have granted—that can hardly be said of any governor of California—but, among his upwards of eighty, it is very certain that he did not pardon John J. Marks, the San Francisco harbor commissioner. Marks was convicted in April, 1875, of embezzlement and sentenced to the state prison for seven years, and it was commonly reported that he had a sufficiency of money to buy a pardon and was willing to pay as high as twenty thousand dollars for release. And it may be added that Marks, though pardoned by the next governor, was, mainly on account of Pacheco's man-

ful resistance of importunities, kept in San Quentin and compelled to serve out nearly a year and a half of his seven years' term.¹

It was in 1875, while Pacheco, the first native-born state governor, thus occupied the gubernatorial chair, that the order of "Native Sons of the Golden West" was organized. On June 29 of that year, in compliance with an invitation to the native-born boys of San Francisco to take part in the celebration of the Fourth of July, a number of them assembled for the purpose of making proper arrangements to parade. The coming together of such a collection of the first-fruits of the American settlement of California—a body of young men unparalleled in physical development and mental vigor and unsurpassed in pride and enthusiasm for the land that gave them birth—naturally suggested the formation of an association for mutual improvement and aid, to be composed exclusively of native sons. In accordance with this suggestion, and greatly encouraged by the success of their holiday parade—in which many of them appeared with a bear flag painted by one of their own number and in the typical costumes of the early mining days—several meetings were held; the originally proposed name of "Native Sons of the Golden State" was changed to that of "Native Sons of the Golden West;" and on Monday, July 11, 1875, an organization was perfected by the adoption of a constitution and by-laws and the election of a full set of officers, with John A. Steinback as president. Its objects were stated to be "social intercourse, mental improvement, mutual benefit and general promotion of the interests of its members;" and only males over sixteen years of age, "born in California or west of the Sierra Nevada mountains after the 7th day of July, 1846," were to be eligible.

The society, thus initiated—which almost immediately took its place as a peculiarly Californian institution by the side of the Society of California Pioneers, though differing from it in embracing a wider range and having younger blood—grew with great rapidity. In March, 1876, under the presidency of Jasper Fishbourne, it was incorporated. Though it commenced with a membership of only about a hundred, and its funds, after paying expenses, amounted to only a few hundred dollars, membership

¹ Assembly Journal, 1877-8, 65.

and funds soon increased. In October, 1877, it suffered a loss of over a thousand dollars by the failure of the Pioneer Land and Loan Bank of Savings and Deposit, which was under the management of Joseph C. Duncan; and about the same time it was called upon to pay out two hundred dollars for the recovery and burial of the body of one of its members, who had been drowned. But its recuperative powers were remarkable. In December, 1877, on application of young men of Oakland, it organized its first branch, under the name of Oakland Parlor No. 2; and this beginning of branch organizations was soon followed by many more in different parts of California. In 1895 the order, which in the meanwhile had been steadily expanding, erected in San Francisco, on Mason between Post and Geary streets, a large and architecturally handsome building for its headquarters; and it has since advanced on the flood-tide of success to a membership of about ten thousand members and two hundred parlors.

Following in the footsteps of the Native Sons and guided by the path they had pursued, Miss Lily O. Reichling and Mrs. Tina L. Kane instituted at Jackson in Amador county, on September 25, 1886, the order of "Native Daughters of the Golden West," having in substance the same objects, spreading with like rapidity and meeting with much the same success as the Native Sons. On July 25, 1887, delegates from seventeen parlors assembled in Pioneer Hall in San Francisco; organized a Grand Parlor, and adopted a constitution and by-laws; and subsequently on June 23, 1897, the Grand Parlor was incorporated. In the ten years between the adoption of its constitution and its incorporation, the order organized ninety-nine parlors in different parts of the state; attained a membership of nearly three thousand, and expended in benefits about sixteen thousand dollars. But—as is the case also with the Native Sons—one of its main objects and in a sociological point of view the most important purpose of the Native Daughters, has been and is to awaken and nurture patriotism and keep alive and forever glowing the sacred love of California.

On December 8, 1875, two days after the meeting of the legislature of 1875-6 and the day before the inauguration of the new governor, Pacheco transmitted his message, which proved a very

creditable document. After a few words of introduction on the prosperity of the state, he congratulated the people on the fact that the outstanding debt was less than it had been for twenty-three years. He proceeded to say that he would not personally be called upon to aid the legislature in their deliberations; but it was his duty to give his views on certain questions which would come before them. One of these, and a very important one, was whether the legislature should ignore, or should it define, the relations between the state and the corporations formed under its laws—whether it should assert the superior power of the one, or should it admit that of the other. “Until that practical question is settled,” he continued, “there is no debatable ground upon which equities may be arrived at; and the questions of regulating freights and fares will create new and yet more virulent discord and strife. It is well understood that the scope of the power of the legislature has been made a matter of open debate; that its authority has been systematically assailed, and that the higher law of contracts, the doctrine that defines control to be confiscation, the paramount authority of the nation and government, and many other logical and exact shields to the abuse of power, have been invoked hitherto and will be again.” He also thought new legislation was necessary in relation to insurance companies, and particularly in reference to the ease with which foreign companies could withdraw and leave their creditors in substance remediless. He called attention to the very limited amount of public land still belonging to the state, and then passed to the paramount importance of irrigation—remarking how the drainage system was heavily taxed by excess of water in the winter, while in summer it was realized what untold wealth had been allowed to run to waste and be lost, and how, on account of want of system, reclamation works in one district had ruined those in an adjoining district. There was therefore great need of some general plan, which would relieve the winter drains and at the same time supply the summer canals, and which would likewise harmonize the different districts. But care should be taken, in a matter of such magnitude, that no irrigation franchises in perpetuity should be granted, none that could not at any time be regulated or, if expedient, be by equitable process retired. It

was much "better that inherent principles of justice should be recognized quietly at the outset than established awkwardly afterwards."¹

He spoke hopefully of the state university; said there was nothing to prevent its being the peer of any in the world, and thought it better for Californian students to find education at home than seek it abroad. He stated that the total sum drawn from the state treasury to support and aid the university from the beginning and for its endowment for the future was upwards of a million and a half of dollars; that it had an endowment of fifty thousand dollars a year paid by the state and lands worth about three-quarters of a million, yielding an income of forty-five thousand dollars. But this total revenue of ninety-five thousand dollars a year was less than the estimated current expenses, which were about one hundred and twenty-eight thousand dollars. As to the cause of education in general, including the common schools as well as the university, he remarked that they would draw from the treasury in the course of the next two years nearly two and a half millions of dollars, or about one-half of the revenue derived from taxation; and he regarded it a very good object for the expenditure of the public money. He declared the state capitol virtually completed and stated the total expense to have been two and a half millions of dollars. In conclusion, after some notice of other public subjects not specially important but necessary to be mentioned, he said that the fish commissioners had repeated an experiment, that had failed on account of a railroad disaster in 1873, and succeeded in bringing an aquarium car with its contents in good order across the continent. The result was that many varieties of the finest fish common in eastern waters had been planted in Californian waters, while the rivers in general had been re-stocked with salmon. And, in his opinion, the appropriation of twenty-five hundred dollars a year expended in bringing this about was trifling in comparison with the great good accomplished.²

In the introductory remarks of his message, Pacheco had spoken of the great prosperity of the state, of its successful

¹ 4 Appendix to Journals, 1875-6, 3-13.

² 4 Appendix to Journals, 1875-6, 13-26.

agriculture, of the increased development of its mines, of the absence of unusual floods or droughts or general disasters in business pursuits; and he characterized its growth as rapid and wholesome. As a matter of fact it was much more rapid than wholesome. Instead of the slow but steady and temperate advances of some of the old states, which were wholesome, California made extraordinary strides by fits and starts, which however tended to make its people more wasteful and prodigal than they had been before. They had always been to some extent careless and extravagant; they knew almost nothing of economy, and now, in the craze to participate in the unparalleled development of the resources of the country and become rapidly wealthy, they became a community of virtual gamblers. The old People's party of 1856, though it was in one sense confined to the city of San Francisco, had, by its wonderful influence in favor of economic administration, redeemed the state from its old insolvency consequent upon the failure of the placer mines. But that party unfortunately could not last; it was in fact ahead of the times, and it had to give way to a system more in accord with the character of the people and their disposition to extravagance. That party, and much of its economic spirit along with it, had gone down in 1867, when Frank McCoppin, the Democratic candidate for mayor and the first man to break the uniform success of the old organization, was elected over all competitors, and Haight, the Democratic candidate, defeated George C. Gorham, the candidate of the combined Union and Republican parties, for the office of governor.

At or about the same time that these political changes were taking place, and indicative of the kind of growth and progress that had been and was going on, the community, and particularly San Franciscans, became infatuated with a desire to speculate in real estate. A few fortunate ventures in what were known as homestead associations, which consisted in the purchase of large tracts of land, chiefly suburban, and in subdividing and selling them off in small lots at large profits, attracted the attention of enterprising men; and the result was that nearly everybody became interested in the business, either as a buyer or a seller; many of those who purchased bought to sell again; and many

of those who sold did so only to form new associations and go still deeper into speculation. In and about San Francisco, which was the center of the excitement, there were several scores of associations, covering nearly all the unoccupied land within five or six miles of Portsmouth Square on one side of the bay and the Oakland wharf in San Antonio creek on the other side; but there were many in other cities and various parts of the country; and all for a time seemed doing well. In some cases, and particularly in the earlier ones, the division into homestead lots was fair; many improvements went forward; families secured homes at reasonable rates; and the general effect was beneficial. But as the excitement grew into what was called a craze, all sorts of frauds were resorted to for the purpose of giving fictitious values to lots and deluding ignorant but confiding purchasers into buying them—frequently for two or three times their value and almost invariably to their great loss in one way or another. The certainty of the completion of the transcontinental railroad gave an impetus to the speculation and also furnished an argument to the speculators; while a very marked increase in the immigration, even prior to the opening of the road, gave color and added weight to the reasons advanced why the pretended opportunity of making a fortune, in the real estate offered, should not be neglected.¹

The homestead association excitement had barely cooled when a more terrible and disastrous craze seized the community and raged for a number of years like an epidemic; infected all classes, and in the end, while enriching a few, left a very large portion of the people impoverished and ruined. This was the so-called mining-stock mania. Curiously enough it had little or nothing to do with gold and hardly touched the Californian mines—which in the form of hydraulic and quartz workings continued to be carried on in enormous investments and with corresponding success—but was confined almost exclusively to Nevada silver deposits. It had already to some extent commenced in 1863, when the rich yields of the Comstock lode and particularly those of the Gould & Curry, Savage, Ophir, Hale & Norcross and Chollar mines led to speculations in mining stocks over brokers'

¹ Hittell's San Francisco, 369.

counters, that far outdid in deceit and recklessness the old gambling ventures over faro and monte tables. Even at that early day, many of the methods of fraud in the management of mines and mining companies, that afterwards played so important a part in the sociological history of the state, were started and developed. It was then or soon afterwards learned how to water stock and sell the new issue for about the same price as the original shares; how to pay large dividends in worthless mines for the purpose of working off the stock; how to get the control of good mines and do the reducing at one's own mills and prices and thus absorb all the profits; how with the aid of diamond drills and otherwise to find out the real value of a mine in advance of others and buy or sell in violation of trust and in fraud of the rights of others; how to conceal discoveries of rich deposits; how to lie; how to combine and conspire; how to expand or depress or, as it was called, "bull" or "bear" the market, and in fine how to cheat, steal, rob and commit other felonies in the neatest, smoothest and safest manner up to that time invented. But that early stock excitement in the course of a couple of years, with the decline of the yield of the Comstock mines as then developed, measurably passed away. About 1868, the discovery of argentiferous chlorides at White Pine in southeastern Nevada caused another excitement; and as usual there was a rush of adventurers, numberless reckless speculations, almost invariable disappointment and in most instances immense loss.

All these excitements, however, were small in comparison with that of 1872, when recent discoveries of rich deposits, or "bonanzas" as they were called, in the Crown Point and Belcher mines on the Comstock lode and in the Raymond & Ely mine at Pioche in Nevada again rendered people wild with the fever of gambling in stocks. The brokers of San Francisco, where most of the mining-stock business was transacted, had already in 1862 organized a sort of auctioneering association called the San Francisco Stock and Exchange Board; and, though it consisted of eighty members of extraordinary dash and quickness and held daily sessions at which stocks amounting to hundreds of thousands of dollars were bought and sold, with a noise resembling the snarling of a pack of wolves fighting over a car-

cass and a rapidity that was absolutely confusing to uninitiated spectators, it was found entirely inadequate to the frenzied demands of the market; and in January, 1872, an additional association was organized of forty members, afterwards increased to between sixty and seventy, known as the California Stock and Exchange Board. Though these boards did not originate the stock excitement, they fostered and increased it. In a few months, the market value of the Nevada stocks shot up from seventeen millions to eighty-four millions of dollars, and sales amounted to millions. As an instance of how these stock transactions, or "deals" as they were sometimes called, were worked, that of a prominent dealer in Crown Point, which took place about this time, may be particularized. Before the discovery of the bonanza was announced, but apparently not before a shrewd suspicion of it amounting in fact to certainty was entertained in knowing circles, the dealer referred to commenced buying up Crown Point stock at a few dollars a share and increasing up to a couple of hundred dollars a share until he had secured a majority of the entire stock, consisting of twelve thousand shares. As the mine itself consisted of only six hundred feet, it will be seen that each share represented only about half an inch. But when the discovery of the bonanza was announced and had been sufficiently magnified by well-understood arts, people seemed to consider the mine almost as valuable as if it were solid silver; prices of shares advanced to nearly two thousand dollars a share; and the dealer was credited with making several millions of dollars. About the same time, in this and other stocks that were carried up by the same upheaval, a few others, who understood the deal, made vast sums; but, on the other hand, thousands of the community were "cinched" and ruined.¹

It was about this time, and while the mining stock excitement of 1872 was at its height, that an extraordinary discovery of a somewhat different kind was whispered around and for a time threw into the shade even the greatest wealth that could be claimed for the Comstock lode. The new discovery purported to be that of a diamond field of wonderfully large extent and

¹ Hittell's San Francisco, 339-343, 351, 376-378, 392, 393, &c.

richness in the interior of the continent, where the precious stones were as plentiful as in the famous valley of diamonds, described by Sinbad the Sailor, and could be gathered by the sackful, without the dangers and risks encountered by that renowned adventurer. The exact location of the find was undivulged except to a very few large capitalists, whom it was designed to inveigle first, for the reason that it was very well known that, if they could be induced to invest largely, their influence and the spirit of speculation in the country would soon bring in the entire community; and the manipulators of the scheme, by adroit disposal of their stock, would be enabled to make millions of money. For the purpose of carrying out the fraud—for such it was—a certain wild and rough region in the Rocky mountains, not more than a day or two's journey from Green River Station on the Union Pacific railroad, had been selected and, in advance or subsequently but before examination by experts, liberally "salted" with quantities of diamonds, rubies and emeralds, including a number of valuable stones from Brazil and some from the recently discovered fields of South Africa. There appear to have been several persons engaged in the business; but, as it was conducted with great mystery, it is difficult to say with certainty who was the originator of it.

Among those whose names first appear in the transaction were Philip Arnold and John Slack. They claimed to have been employed in prospecting in the Rocky mountain regions on a contract with Asbury Harpending, the same individual who had been concerned in 1863 in a magnificent project of seizing, under a letter of marque from the president of the southern confederacy, a few of the outward bound Pacific mail steamers and possessing himself of their millions of treasure. Notwithstanding his complete failure in that attempted scheme of plunder, Harpending, whose mind teemed with large projects, had managed to gather considerable pelf and, in spite or perhaps to some extent on account of his manifested buccaneer proclivities, was well received among the mining stock manipulators and doubtless more or less admired by some of them for the largeness and dash of his undertakings. It is true that he afterwards claimed to have been himself deceived; but, under

all circumstances, he, more than any other person, induced San Francisco speculators to invest and was as much interested as any in what was to be made out of their investments.

The first open move in the somewhat complicated game was the appearance of Arnold and Slack in San Francisco, with a bag of precious stones, including diamonds, which they claimed to have found in the fields discovered by them, and which they said were only a specimen of what the region round about produced in large quantities. These stones were deposited with Harpending; and he immediately made it his business to call upon a few of the largest capitalists, particularly those engaged in mining stock speculations; announce the discovery, and exhibit the specimens that had been placed in his keeping. He of course referred to Arnold and Slack as his informants; and they on their part, professing to think they had one of the largest things on earth, begged, while disclosing the locality where they had found the gems, that it should not be divulged until proper measures should have been taken to secure title to the ground, which they represented as very extensive and of incalculable value. Their proposition was, as they had no adequate means of their own, to form a company and dispose of only enough stock to procure the necessary legislation making diamond fields patentable, and to take up all the country where they had gathered their stones, and everything in the neighborhood of similar geological character. Under no circumstances, however, would they dispose of any more than was barely sufficient to put the enterprise on a working basis; and it was particularly desirable that nothing should be made public about the find or its location until everything in the way of exclusive title to the ground should have been properly secured. In the meanwhile, if any information should unfortunately leak out about the gems and their great value, it should be represented that they had been found in Arizona or Utah or any place other than where they had been picked up.

The San Francisco capitalists, impressed with the representations made to them and especially with the sight of the bag full of rough diamonds, rubies and emeralds, which Harpending lavishly spread out before their eyes—and of which there was said

to have been about a peck—concurred in the plan of keeping the discovery a secret; but, in accordance with their usual practice in reference to mines and to satisfy themselves of the genuineness of the find, they determined to have the stones produced examined by good judges and then send experts to visit and report upon the fields. To this proposition, Arnold and Slack made some judicious objections; but they were soon satisfied with coin; and the next public move was to carry the bag of stones to New York and submit them to lapidaries, employed by Tiffany & Co. of that city, who reported that a number of the pebbles shown them were genuine diamonds, and that the lot taken together was worth about one hundred and fifty thousand dollars. The report on the genuineness of the gems was of course expected by the schemers; but they were probably themselves somewhat surprised at the value placed upon them. Having passed this test with such remarkable success, they anticipated no trouble with the mining experts who were selected to examine the fields. The chief one of these was a well-known mining engineer of good reputation, named Henry Janin, who was furnished with a few thousand dollars in money and an option to purchase at a comparatively low figure a certain quantity of the stock of the proposed new company. He and one or two others, accompanied by Arnold and Slack, who still made some further judicious objections, were at last taken in a roundabout way to the locality and pointed out the spot where the diamonds had been found; and, upon digging, they discovered many more and still richer than those exhibited. At this, it was suggested that other spots not far distant, which had a general resemblance to the spots searched, might be rich; and upon examination they proved quite as valuable—and in fact some of the costliest stones were picked up in the new diggings. It had been reported that a number of the first discovered gems were found on ant-hills, and the impression intended to be produced was that the insects, in excavating for their subterranean galleries, coming upon the obstructions, had carried them to the surface and dumped them out of the way; and in the new discoveries, accordingly, many stones were found scattered on ant-hills as if the industrious little miners had had difficulty, on account of the superabundance of

precious pebbles, in finding passages for their habitations. At any rate the gems in the places searched were plentiful; and the experts, having no special knowledge of diamond mining, were completely deceived. When Henry Janin, whose judgment of ordinary gold and silver mining ground was first-class, came to make out his report—without giving any explanation of the geological formation or referring to the possibility of deception—he spoke mainly of what he had found or what was found in his presence, and then began to discuss the question whether, with a field so extensive as that he had seen and in which diamonds had been so abundantly discovered even with the rude tools used, the value of the gems would not materially fall when working should be commenced on a large scale and with proper appliances.

Janin's report and the production and exhibition of a new bag of precious stones, and especially the unquestionable authority of Tiffany & Co.'s lapidaries that the gems were genuine, settled the business for the time. But there were still a few moves in the game to be made. With great skill Harpending and Arnold now insisted that the company should be organized in New York and not in San Francisco; and for some time a very interesting controversy went on between them and the San Francisco capitalists on this question. A few New York speculators of prominence, who had heard of what had been going on, bid for stock, and some shares seem to have been disposed of. But, as was doubtless intended from the start, the San Francisco men were determined not to allow the uncounted millions of which Janin spoke to slip from their grasp; a few hundred thousand dollars more or less were a mere bagatelle; and solid Californian gold carried the day. In the meanwhile information of the find reached the geologist and explorer Clarence King, who had been employed by the government some years previously to make a survey of the country along the fortieth parallel of latitude near which the new diamond fields were located. He had examined the region sufficiently to be satisfied that there was no diamond-bearing ground there and at once suspected fraud. To make entirely sure, he at once revisited the location and, upon a very brief investigation, found, as he had suspected, that the ground had been "salted" and par-

ticularly around large rocks and other permanently fixed objects that could be used as marks. In fact, some gems were found on the top, or in crevices of, such rocks, where they had evidently been carelessly dropped or overlooked by those engaged in "salting" the mine. About the same time, word came from London that some of the Harpending stones, that had been forwarded for examination there, were identified as African diamonds; and it was also ascertained that, not a great while before the date of the discovery, a large purchase of gems in the rough, including African diamonds, Brazilian stones and some rubies and emeralds, had been made in England and carried to America.

King's report, backed up by the disclosures from London, put an immediate stop to the speculation in diamond shares and convinced the San Francisco capitalists that they had been most egregiously swindled. Their money, consisting of many hundred thousands of dollars, was gone; but they had the consolation of knowing that they had been taken in by one of the neatest, most skillfully planned and adroitly managed frauds of that day of questionable speculations. Fortunately for the general public, however, the deal had not progressed far enough to embrace the common people, whose savings, small in individual sums but large in aggregate amount, had been and continued to be the prey of the so-called bonanza manipulators and speculators of the ordinary mining-stock excitements. Meanwhile the pretended discoverers managed to keep away from California. Possibly, if they could have been reached in time and prosecuted in the local courts, there would have been some very rich developments; but for this they were careful to afford no opportunity. Subsequently, indeed, a suit for three hundred and fifty thousand dollars was commenced against Arnold, Slack and others in New Jersey, based on their alleged fraudulent practices; but it amounted to little or nothing; and the victims of the great "diamond swindle," as it was called, were obliged to pocket their wrongs and charge them up in their balance sheets on the wrong side of their profit and loss accounts.¹

But the mining-stock excitement of 1872, violent as it proved

¹ San Francisco newspapers of December, 1872, and particularly Evening Bulletin of December 6, 1872.

to be—so violent in fact as to float not only the diamond swindle but many other schemes quite as fraudulent and only smaller in amount—was far surpassed by that of 1875, which followed the discovery of a bonanza, of supposed unlimited extent and value in the Consolidated Virginia mine on the Comstock lode, at a period when the Crown Point and Belcher were still paying immense dividends. While the old bonanza was yielding at the rate of about ten millions of dollars a year, the new bonanza was said to have ore in sight that would yield fifteen hundred millions. At this news, as may well be imagined, there was no limit to the popular frenzy. The Louisiana scheme of France and the South Sea bubble of England seemed to be repeated, with the difference that in this case there was some foundation of solid silver, though small in comparison with popular supposition; while in the other cases there was no solid foundation whatever. If people were wild in those cases or in the excitement of 1872, they now became, so to speak, insane. The race for wealth, which was simply a race to secure stock in the bonanza mines, attracted nearly everybody. The man or woman, who had or could raise money and did not invest, was the exception. Not only the profits of common trade, manufactures and agriculture but often the principal, the slow accumulations of industry, the hard-earned wages of labor, the salaries of professors and preachers, the fees of lawyers and physicians, the deposits in savings banks, the produce of mortgaged homesteads, the money that was inherited or that could be borrowed—nearly all found their way into the mining-stock market; and the value of the Comstock shares, as quoted and traded in the market, rose for a couple of months at the rate of a million of dollars a day.

The chief managers of the Consolidated Virginia bonanza were what was known as the bonanza firm, consisting like the Central Pacific railroad managers of four persons—James C. Flood, William S. O'Brien, John W. Mackay and James G. Fair. Flood and O'Brien had for many years kept a popular drinking saloon on Washington street in San Francisco and themselves waited on their customers. Like many others, they were induced to invest in Comstock mines and, by their aptitude for the business, began to make profit out of their operations. With an eye to surer as

well as more extensive speculations in the same line, they formed a partnership with Mackay and Fair—who were miners by occupation and were engaged in practical working on the Comstock lode in the very midst of the mines—in the buying and selling of which they had been so fortunate. Soon after the formation of the firm, whose legal designation still continued to be Flood & O'Brien, they purchased the then as yet unproductive ground near the north end of the Comstock lode, consisting of several locations and known as the Consolidated Virginia mine. It was thirteen hundred and ten feet long and divided into ten thousand seven hundred shares. The price paid was from four to nine dollars per share or altogether less than one hundred thousand dollars and less than one hundred dollars per lineal foot. It had been worked in the way of prospecting for ten or more years and in fact almost continuously since the discovery of the Washoe deposits, at an expense of over a quarter of a million of dollars; but it had never yielded any ore of value or returned a dollar of dividend. And it was plain to those who were acquainted with the ground that it would, under ordinary circumstances, require nearly as much more expenditure to thoroughly explore it. The new firm either knew, or thought they had reason to believe, the mine was rich and determined to expend the necessary money to find out. But instead of sinking on the old shaft, which was only four hundred feet deep, and continuing the old system of exploitation, they made arrangements to run a drift or tunnel from the Gould & Curry shaft, which was eighteen hundred feet deep and eight hundred feet from the Consolidated Virginia ground. This drift, which was twelve hundred feet below the surface, led to the discovery of the famous bonanza extending the whole length of the mine. Its value at once shot up into the millions. Almost immediately, what had been one mine was divided into two, the Consolidated Virginia and the California; and, instead of the original ten thousand seven hundred shares of the old mine, each of the new ones was divided into one hundred and eight thousand shares—each share thus representing less than the one-fourteenth of an inch. But the actual receipts from the bonanza for the first six or seven months of 1875 amounted to an average of over a

million and a half of dollars per month; and the shares above mentioned, notwithstanding their extreme tenuity, ran up to upwards of seven hundred dollars each, or upwards of one hundred and fifty million dollars for the whole property.

While the so-called bonanza stocks and their neighbors, which were carried up by the same rise, thus advanced or were rather—to use the language of the day—“bulled” up with the most consummate skill and to figures that seem incredible to a sober age, the community became virtually frantic with the fever of speculating in them. There seemed to be nothing too insane for people to do. Reason appeared to have lost its throne. Those who had speculated before speculated again and raked and scraped the dregs of what they had left for means to retrieve, as they supposed, with compound interest, the fortunes they had lost. Many who had escaped before were now drawn into the maelstrom; robberies, thefts, breaches of trust and crimes of all descriptions were committed to procure money to purchase stocks; and no doubt, if all the brutality and sin that were occasioned by that extraordinary excitement could be known in detail, they would be appalling. But the frenzy did not last long. The men who were at the bottom of the business and who had engineered the rise in stocks, as soon as the output began to decline, also began to “unload” as it was called or sell out their shares; and the manner in which this was accomplished in various instances showed that there were many methods, in the manipulation of mines, that had theretofore been unknown but far exceeded all the old ones in deviltry. The result was that stocks fell; and, when they commenced falling, they went down rapidly—shrinking in a few weeks to a third of what they had been previously held at, and carrying with them in the general crash all except the manipulators, some of their special friends and a few others who were smart enough to see ahead and save themselves in time.

Among those who dealt largely in mining stocks, and assisted in various ways in giving them currency, was the Bank of California, a financial corporation of San Francisco capitalists and one of the leading banking institutions of the world. It was then under the management of William C. Ralston. This re-

markable man, a native of Ohio, born in 1825, after receiving a common-school education, learned the trade of steamboat building and soon rose to the position of clerk on one of those Mississippi river steamers, known as floating palaces. In 1850 he started for California, but stopped at Panama, where he was made agent of the firm of Garrison & Morgan, owners of a line of steamships connecting San Francisco with New York. He was so energetic and brilliant as a business man that, in 1853, he was promoted to the post of agent of the same firm at San Francisco; and a few years subsequently, when his employers opened a San Francisco bank, they took him in as a partner, calling the firm Garrison, Morgan, Fretz & Ralston. About a year afterwards, Garrison and Morgan drew out, leaving the firm Fretz & Ralston, which, chiefly on account of Ralston's rare tact, passed successfully through panics and financial convulsions that carried many others down. In 1858 the firm changed to Donohoe, Ralston & Co.; but the connection did not last long. In 1864 Ralston induced Darius O. Mills and a number of other millionaires to join with him in founding and organizing the Bank of California, of which Mills became president and himself cashier. This bank from the start was a very great success, monopolizing almost all the banking business of the country and extending its connections over all the world. In 1872, Mills having voluntarily retired, Ralston became president and started almost at once on the most extraordinary business career ever known in California—remarkable no less for the blindness and negligence, with which his associates sat by and let him go on, than for the prodigal splendor and magnificence of his expenditures.

Very early in the history of the bank, it had taken an active part in the Comstock mines and sent William Sharon as its confidential agent to reside in Nevada. Under general instructions, chiefly the work of Ralston, Sharon conducted the bank business there—particularly that of advancing money on the security of mining stock, promoting the building of ore-crushing mills and so regulating affairs that in a short time he bought them in on foreclosure or in some other manner obtained control. With so much ability and skill was this done that the next move was a sort of partnership between Ralston and Sharon, by means of

which Sharon became individually interested in the best part of the Nevada business; and, being backed, as it were, by the apparently unlimited capital of the Bank of California managed by Ralston, he soon developed into a personage of very great importance, into in fact the greatest man, in a financial point of view, in Nevada. The manner in which he conducted the business, thus worked up, was by means of a corporation known as the Union Mill and Mining Company, of which he was president and manager. It became the owner of nearly all the mills on the Comstock lode—supposed to be worth altogether over a million of dollars, not so much perhaps on account of actual cost as on account of their having in substance the monopoly of the ore-crushing for all the mines. In addition to this, it became the owner of the Virginia City water-works and the Virginia and Truckee railroad—supposed to be worth some ten millions and being specially valuable on account of their control, the one of the water and the other of the timber and wood indispensably necessary for the operating of the mines and mills.

While Sharon was thus conducting strictly business operations in Nevada with extraordinary shrewdness and coolness, and becoming wealthy in his own right, Ralston in California seemed to become a sort of monomaniac on the subject of splendid projects and among them many calculated to develop Californian industries. His mind appeared to be peculiarly, and apparently unhealthily, affected in that direction. He was ready to listen to almost anybody who had an enterprise to offer, and to encourage almost any one that looked to him at all plausible. At the same time, on account of his great success hitherto and the almost unlimited control of the Bank of California which its careless trustees had allowed him to assume, he seemed to think he owned its funds and disbursed them very much as he pleased. He thus expended immense sums in all sorts of directions from which there was very little return. He promoted and became more or less largely interested in various manufacturing establishments—among them those known as the Mission woolen-mills, the Kimball carriage-factory, the Cornell watch-factory, the West Coast furniture-factory, the San Francisco sugar-refinery and many others. He contributed much to the building of the mag-

nificent dry-dock at Hunter's Point in San Francisco, to reclamation works at Sherman Island and to the San Joaquin irrigating canal. He furnished capital more or less largely for the erection of the Grand Hotel, for the buying up of property for the opening of New Montgomery street and for the building of the California theater in San Francisco. He purchased an extensive and delightful country-seat in the Cañada del Raimundo in San Mateo county, which he called Belmont and improved into what might be supposed a resemblance to the famous country-seat described in the Merchant of Venice—where he entertained with such munificence that it was popularly supposed in uninformed quarters that the Bank of California furnished the money for it in order to impress the world and extend its influence and business. As a specimen of an enterprise of a different character, he was said to be at the head of a scheme to induce the city and county of San Francisco to purchase certain grounds including water-rights, in what was known as Calaveras valley in Alameda and Santa Clara counties, for ten millions of dollars, out of which it was charged that he and his associates would have made nearly half for themselves. The plan, which was called the "Calaveras cow-pasture scheme," was so vigorously opposed by some of the San Francisco newspapers, however, that it was defeated; and Ralston found himself considerably injured by the attacks and exposures, to which he was subjected in consequence of his connection with it. He also projected, planned and partly built the Palace Hotel, which at the time of its construction was the largest edifice of the kind in the world.

There have been various reports as to the manner in which Ralston managed to hoodwink the trustees of the bank, as to the sources whence he obtained the funds for all these lavish expenditures. It is certain that they were deceived, either by direct falsifications of the business of the bank or by a careless supposition, superinduced by the insanity of the stock mania, that the Union Mill and Mining Company was a sort of second robbers' cave and that Ralston had the "open sesame" to its unlimited treasures. And while the bonanza craze, even that of the Consolidated Virginia and California in which Ralston had no part, kept up, there was still no suspicion of anything wrong

in his affairs. On the contrary he was at the very acme of a reputation for liberality and enterprise altogether unexampled and, as some thought, an honor to the country and a credit to mankind. But when the bonanza craze had commenced to decline and the Comstock stock shrank to about one-third of previous quotations, it was suddenly found that the Bank of California as a corporation was insolvent, and that all Ralston's extravagant expenditures had been made, not with his own but with the bank's money. It had been understood that Flood & O'Brien, with the millions made out of the Consolidated Virginia and California mines, intended to start a bank in San Francisco; and it is said they were now invited to take hold of the Bank of California. But either the proposition did not commend itself to their judgment, or terms could not be agreed upon; and on August 26, 1875, to the wonder and surprise of nearly everybody—only a few persons having any idea of the real state of affairs—the bank closed its doors. On the following day, at a meeting of the trustees, Ralston was deposed from his position as president and manager. He had for some time been accustomed to swim in the bay near Black Point. He appears to have proceeded almost directly from the meeting to that place, and as usual plunged into the water. Upon swimming out some distance from shore, he was noticed to be struggling as if suffocated or in convulsions; and a boat going to his relief picked him up. He appeared unconscious and insensible and, notwithstanding long and vigorous efforts, could not be resuscitated.

Ralston's death increased the excitement consequent upon the failure of the bank. Some said he had been driven to suicide; and a very common supposition was that he had taken his own life. He was a proud-spirited man and could ill brook the exposure of what he had done. It was rumored that he had swallowed a deadly drug just before or at the time of entering the water. But if so, there was no proof of it either before the coroner or elsewhere and it was not made public. Whatever the facts were, and probably whatever they might have been, he had a certain class of friends who eulogized and, if they had been able, would have apotheosized him. Not long afterwards, when the facts about his expenditures became known, it was seen that

he had misappropriated between four and five million dollars of the bank's money and that much of it was irretrievably gone. So great was the loss that the trustees at first thought of throwing the institution into bankruptcy; but, on further consideration, and especially when they found that as individual stockholders they would under the constitution and laws of California be personally liable for the debts, they determined to rehabilitate the bank; and, by the efforts chiefly of Sharon, they succeeded in doing so. Sharon also took hold of the Palace Hotel and finished it. About the same time, the bonanza firm of Flood & O'Brien opened their projected institution in San Francisco, calling it the Bank of Nevada—which also proved a success though not so completely as to absorb or destroy the Bank of California, as its originators seem to have expected.¹

But the most noteworthy in many respects of all the men connected with the Comstock lode was Adolph Sutro. He was born at Aix-la-Chapelle in Rhenish Prussia on April 29, 1830, and came to America in 1850. On November 21 of the same year, he arrived in California and went into business, chiefly in tobacco and cigars, at San Francisco. In 1856 he married and in the course of time raised a family of four daughters and two sons. In 1859, attracted by the discoveries of the Washoe mines and the opportunities presented there for a young man of energy, he proceeded thither; established himself at Virginia City, and in 1861 built a quartz mill on Carson river. As the developments on the flank of Mount Davidson progressed, and more and more difficulty began to be experienced by miners in getting rid of subterranean waters as their shafts penetrated deeper and deeper into the mountain, Sutro conceived the idea of constructing a great tunnel at a low level from the nearest point on Carson river, and thereby not only draining the entire Comstock lode but also furnishing superior ventilation for its under-ground works, and affording a cheaper and more convenient mode of removing ore and débris from the deep drifts than lifting them to the surface with expensive machinery.

The point on Carson river, where he proposed to start his tunnel, was twenty thousand four hundred and eighty-five feet,

¹ San Francisco newspapers of the period.

or nearly four miles, in a horizontal line from the shaft of the Savage mine, which was centrally located; and from there it was intended to run lateral drifts northerly and southerly so as to tap all the mines on the lode. As designed, and afterwards constructed, the bore was to be ten feet high and twelve feet wide with a drainage trench in the center, and to have two tracks of rails, one on each side, and so constructed as to be suitable for the passage of mules drawing cars. It was to strike the Savage shaft at a depth of sixteen hundred and forty-five feet below its mouth, and to have a sufficient incline or fall towards Carson river to safely and rapidly carry off all the drainage that might flow or be turned into it. Substantially all the details were arranged in advance and were so complete, and everything connected with it appeared so feasible and promising, that the projector had no difficulty in enlisting attention and influence for carrying them out. A company for the purpose was organized in Nevada in 1864; and the first legislature of that state on February 4, 1865, passed an act granting the necessary franchise, right of way and other corporate privileges, on condition that the work should be commenced within one year and completed within eight years from the passage of the act.¹ Arrangements were soon afterwards made for rights of way with persons owning surface claims; and then formal contracts were entered into with nearly all the mining companies on the Comstock lode, by the terms of which they agreed to pay to the tunnel company two dollars for every ton of ore taken from the mines after the work should be extended so far that it could be made available for drainage purposes. They were also to pay a certain sum per ton for the removal of ore or waste rock and the taking in of supplies, and a price for each and every person in their employ passing through. The rates agreed upon being considered reasonable, everybody appeared favorably disposed. At that time Sharon, Ralston and the Bank of California were dominating almost everything in Nevada; and they were among the foremost advocates and supporters of the enterprise.

Sutro at once began looking around for capital; but at the same time, being anxious to protect himself at every point and

¹Stats. of Nevada, 1864-5, 128, 129.

especially against those who had not signed contracts with him, he proceeded to Washington and on July 25, 1866, procured the passage of an act of congress granting him the right of way through any public land crossed by his tunnel; the right to purchase at one dollar and a quarter per acre such public land at or near its mouth as he might require, not exceeding two sections; and the right to purchase at five dollars per acre any public mineral land cut, discovered or developed by the tunnel and within two thousand feet on each side of it, excepting the Comstock mines as then known and all others held in actual bona-fide possession. The act—which preceded by one day the first general law of congress for the disposition of mineral lands—provided further in express terms that the owners of Comstock mines drained or benefited should hold subject to the condition, to be expressed in any future grant or patent of the same, that they should pay to the tunnel the same rates as had been, or might be, named in contracts of owners representing a majority of the estimated value of the Comstock lode.¹ Immediately afterwards, Sutro, having thus secured his project from being taken advantage of by those who had refused to contract with him, laid it before capitalists and in a short time obtained many promises and pledges for the purchase of stock; but, as the necessary amount of money was not paid in as rapidly as called for, further time was asked for and given by at least some of the mining companies interested. This was in the early part of 1867—up to which time, except for the delay referred to, the prospects of the enterprise continued bright; and it was almost unanimously advocated and supported by the entire community.

While affairs were in this condition and Sutro was diligently working away in endeavoring to raise money, the Bank of California and those connected with and interested in its Nevada business suddenly changed their minds and determined to oppose the tunnel. They seem to have found that Sutro was a man of very independent character, who could not be controlled exactly as they desired, and that the new enterprise, if carried out, would be likely to be managed without much reference to their own designs. They thereupon, with the idea and in anticipation of

¹ U. S. Stats. at Large, 1865-6, 242, 243, 251-253.

breaking up the project so far as Sutro was connected with it, made known their opposition and, among other things, requested the representatives of Nevada in congress thenceforth in every possible way to thwart and defeat it. They also induced the Nevada press and many of the people, and especially everybody interested in the Comstock mines whom they could influence, to join in their hostility—pronouncing the tunnel useless and the mere scheme of an adroit and energetic speculator. They called it a “coyote hole” and declared that its projector’s purpose was to interfere with and blackmail the honest mine owners who were developing the industries of the country and pouring into the pockets of the people their gracious millions of treasure.

Few men could have resisted, or would have attempted to resist, such a storm of opposition as was thus raised. Almost all those who had previously favored the undertaking now became hostile; most of the Comstock mine owners and manipulators who had been enthusiastic in its recommendation now pretended that it was against their interests, and those who had been inclined to invest and some who had given their names declined to have anything further to do with it. But if it was expected by such tactics to put Sutro down, those who were in the game did not know their adversary. He was not to be put down; his whole soul—and it was a soul of will, daring and persistence that nothing could frighten or tire—was in the project; and all they did or could do was simply to rouse him to greater and greater efforts. Being satisfied with the value, legality and justice of his undertaking, and fully appreciating the character of the opposition that had thus been raised, he made up his mind to lay his cause before the people not only of Nevada but of the United States. If the Bank of California and its adherents would not listen, there were plenty of other people who would, and he was determined that they should have an opportunity. He had never professed to be a public speaker; he was not at that time as fluent in the use of Anglo Saxon as he afterwards became; his pronunciation continually reminded the hearer of the German and French languages, which had been the tongues of his earlier years; but he was thoroughly in earnest. Being full of his subject and having clearly in his mind what he intended to say, he commenced

an extraordinary lecturing campaign, in which he attacked and denounced the Bank of California crowd and, with bitter and unsparing invective, exposed what he called their monopoly of nearly everything of value in Nevada; their indiscriminate destruction of the forests that left nothing green in the country; their zigzag railroad, which however was no more crooked than their management of it; their extortionate water company, and their grasping avarice in everything, small as well as large, that attracted their insatiate greed. And with all this, he contrasted his own project, which he claimed to be a beneficent boon to the mining population; calculated to make the Comstock lode dry in all its length, breadth and depth; remove its foul air and noxious vapors; mitigate its almost intolerable heat; ameliorate its dangers in case of fire or accident, and with its increased productiveness furnish remunerative employment for an unlimited number of laborers in the future. He called attention to the fact that his enemies were attempting to crush him; that he was only one man against a rich and powerful combination; that he was perhaps the only man that had dared to stand up against them; that he was not acting out of mere bravado; that his circumstances and the time and money he had put into the enterprise compelled him to take the position he did; and he asked the public to see that he had fair play in the struggle thus forced upon him. He charged that his adversaries were not only his enemies but the enemies of the people of Nevada, who were almost helpless in their hands. He said they had bribed the judges, packed the juries, hired false witnesses, purchased the legislatures, elected representatives to suit their own sordid purposes, and dared any one to expose their villainies or oppose their iniquities. He did not mean to counsel violence against them; but he did want to see the people, whose cause was the same as his own, join him in his fight against the common enemy, by helping him to build the tunnel that would be as much to their interest as it would be to his own.

It was very easy for his adversaries to cry "demagogue" and "madman;" but it did no good. Those that he influenced were not the excitable classes only; but the soberer portions of the community were also attracted by his vigor, force and untiring activity. In a short time he produced such an effect that his

enemies began to find they had provoked a power that was stronger than their own. Sutro himself was too wise to permit any violence; but he stirred up a feeling that might have taken that direction, if he had not had the ability to guide it solely to the support of his project. The miners of Nevada—that is, the men who worked in the mines—almost as a body joined together in raising money, some fifty thousand dollars, and purchased a sufficient quantity of his stock to enable him to make a start; and he commenced upon the tunnel on October 19, 1869. He then carried his oratorical campaign into California, to the eastern states and to Europe; obtained recognition everywhere and subscriptions in many different quarters—some of which failed but upon others of which he realized. In 1871 English capitalists put into the enterprise nearly a million and a half of dollars; and this was soon increased in the eastern states by half a million more. Several hundred laborers were at once employed at different points, and the work progressed rapidly. It had been the intention, for the purpose of hastening the labor, to sink four construction shafts from the surface, so that from the bottom of each of them two sections of the tunnel proper could be driven at the same time; but, on account of the excessive heat in the lower depths and the inflow of water which the pumps could not remove with sufficient rapidity, only the two nearest the mouth of the bore could be made available. Where work could be done, however, it was vigorously pushed, and particularly after the invention and introduction about that time of various American improvements in drilling apparatus which greatly facilitated the labor of the men employed. Before the use of the new drills, boring could not be carried on at any point at a greater speed than about one hundred feet per month; but afterwards this speed was trebled; and during the years 1875 and 1876 it advanced at the unprecedented average rate of three hundred and eight feet per month.

Meanwhile more money came in and more zeal, if that were possible, was put into the work. The drills went night and day, Sundays and holidays, without cessation; carpenters followed with their props and timber work; the rails of the tunnel tracks were extended; the loose rocks blasted out in front were pitched

with willing hands into the iron cars, long trains of which drawn by lines of mules were continually going in with timber and supplies or coming out with *débris*. And nearly all the time he could spare from other labor, Sutro was personally present, urging speed and representing that every ton of ore taken from the Comstock lode before the tunnel should be completed would be a loss to it of two dollars and in the aggregate, on account of the manner in which the bonanza mines were crowding their output, of very large sums of solid money. As a pusher of tunnel construction, he was something like Charles Crocker as a driver of railroad building; he threw off his coat, rolled up his sleeves and took right hold, wherever he could help, encourage or hasten the work. He did not hesitate to strip and go to the front. Flying dirt and smoke, heat and foul air, dripping slush overhead and sticky mud underfoot, had no terrors for him. He went in with the grimy, half-naked miners; and, while he was with them, he was one of them—a man of immense will power, of extraordinary executive ability, the right sort of a man for the place and the labor while it lasted.

The chief difficulty in driving the tunnel was the heat, which steadily increased as the work progressed. In 1873 the underground temperature at the end of the bore was about 72° Fahrenheit; in 1874 it rose to about 83°; in 1876 to 90°; in 1877 to 96°; in April, 1878, to 109° and in May to 114°. Only a few hours of labor at a time could be performed by anybody under such circumstances. The lamps burned dimly, and strong men fainted at their work and had to be hurriedly carried out for recovery. The end of the tunnel was by that time advanced two miles from the nearest ventilation shaft; and, notwithstanding the use of the most powerful blowers to force fresh air into the bore, the heat was almost stifling. It was next to impossible to force the mules far enough in to connect with the last-filled cars; and it became evident that endurance had almost reached its limit. But the Comstock lode was now but a short distance off. By the end of June, the miners at the bottom of the Savage shaft began to hear the blasts of the approaching tunnel and in a few days afterwards the blows of the power drills. On July 8, 1878, when it was known that but a few feet remained to be

excavated, Sutro himself again pushed to the front; and, when a well-placed blast opened the first jagged hole into the Savage shaft, he was the first man to crawl through the opening. It was said that he was "overcome with excitement;" but it was rather with the heat and bad atmosphere, which, when the opening was made, rushed into the Savage shaft and shot upwards to the surface. The connection thus made at once established a natural current of ventilation; and thenceforth the temperature of the tunnel, as well as that of the Savage drifts, became much more tolerable.

No compromise had as yet been made with the recalcitrant managers of the chief Comstock mines; but in 1879 one of their main pumps broke down, and the accumulating water began to get the better of them and flood their lower levels. To avoid serious disaster, they turned the water into the tunnel, and the flow temporarily drove Sutro's men out. He at once commenced to construct a water-tight bulkhead to stop the current, force it back upon the mines and prevent any further ingress into the tunnel. This brought matters to a settlement; the mine owners knew their own interest sufficiently well to understand that they would have to yield; it was much cheaper to drain through the tunnel than to pump, and in a comparatively short time satisfactory arrangements were completed with all the companies on the lode. Laborers were then immediately put to work increasing the width and depth of the drain between Sutro's car tracks so as to carry off the water; and in a few years the annual flow through it rose to billions of gallons, and the Comstock mines were kept comparatively clear. Sutro had now attained his main purpose; he had accomplished the principal part of his great task, and his victory was assured. Subsequently the lateral tunnels under the chief mines of the lode, as originally contemplated, were completed—making the total length of the main bore and laterals thirty-three thousand three hundred and fifteen feet or about six and a third miles. The cost of the main tunnel had been about three and a half millions of dollars, or with the laterals about five millions.¹ But Sutro, in the meanwhile,

¹See on the subject of the Sutro Tunnel, besides newspaper accounts and pamphlets of the time, "The Story of the Mine," by Charles H. Shinn, New York, 1896, 194-208.

finding that the necessary costs of construction had compelled him to dispose of more than a controlling interest in his corporation and that the management was likely to pass into other hands, in whom he could not have as thorough confidence as in himself, made up his mind to sell out his stock—which he accordingly did, and at a good figure. He then returned to San Francisco with his millions; invested the greater part of them in city property, particularly outside lands; became the owner in a few years of at least one-tenth in area of the city and county territory, and one of the most public-spirited and widely-known men in California. Among other things he purchased the largest portion of the bare hills of the San Miguel rancho, which he named Mount Parnassus and planted into a magnificent forest. He also purchased the Cliff House property and laid out a charming garden known as Sutro Heights, which he threw open to the public. And in the course of time he constructed, in the cove near the Cliff House and opposite Seal Rocks, a bathing establishment, with immense tanks of pure and continually-changing ocean water, tempered to suit bathers and surrounded with almost numberless dressing rooms and tiers of seats, rising in rows one above the other, for many thousands of spectators. Between these tiers of seats, he built grand staircases flanked by terraces of the rarest and most beautiful plants; and on the sides he arranged long galleries of pictures, sculptures, tapestries, cabinets and objects of art of almost every description—presenting to the eye a panorama of great beauty; and the whole he covered in by a high and airy framework of steel and rounded roof of tinted glass, through which the sunlight penetrates and suffuses the interior scene with an exquisitely tempered glow. It is perhaps the completest establishment of the kind the world has ever seen and in many respects outshines the imperial baths of ancient Rome.

In addition to the above mentioned and various other enterprises, a number of which have been given to the public, Sutro has been for years collecting in Europe and America an immense library, now amounting to upwards of two hundred thousand volumes and almost innumerable manuscripts, prints and papers, which it is understood will also in time, with a magnificent build-

ing at the foot of Mount Parnassus to contain it and a fund for its support, be devoted to public use. And thus the story of the Sutro tunnel, which has rendered all these benefactions possible, besides its intrinsic interest as describing the work of a representative Californian, is so intimately connected with the history of California and its development as to become an integral part of it. Nor has there been anything in the life of Sutro as a man of affairs, as a liberal and intelligent entertainer of distinguished guests who have visited California, as a man interested in science and art and learning of every kind, or in the conduct of his multifarious labors and many-sided businesses, that can be called narrow or contracted. He presents the case of one of the comparatively few Californians who have accumulated immense wealth—with a strict regard to business principles indeed but in such a way that he has nothing to blush for—that is using it in a manner for which the people of the state ought to be and doubtless will be duly grateful.

Pacheco

CHAPTER IX.

IRWIN.

AT the election of September 1, 1875, there was another complete change in the political complexion of the state.

The Dolly Varden or Independent party had nominated John Bidwell for governor and Romualdo Pacheco for lieutenant-governor; the Republicans Timothy G. Phelps and Joseph M. Cavis, and the Democrats William Irwin and James A. Johnson. A fourth party, called the Temperance Reform, nominated William E. Lovett and W. D. Hobson; but their vote was so small as not to be worth counting. The various platforms were in general a re-threshing of old straw, with nothing very new or striking and nothing very serious or earnest about any of them. It is hardly likely anybody cared much about what they contained; but, whether so or not, it had become plain that the majority of the community, or rather perhaps that part of the floating vote which made the preponderance on one side or the other, did not want any more Dolly Vardenism, even less than out-and-out Republicanism. On the contrary, it preferred making another trial of Democracy. Irwin was elected by a vote of sixty-one thousand five hundred and nine over thirty-one thousand three hundred and twenty-two for Phelps and twenty-nine thousand seven hundred and fifty-two for Bidwell. For lieutenant-governor Johnson ran about three thousand less than Irwin and Pacheco nearly four thousand more than Bidwell. At the same election, three Democratic congressmen were chosen—William A. Piper, John K. Luttrell and P. D. Wigginton, and one Republican—Horace F. Page.¹

William Irwin, the new governor, was a native of Butler county, Ohio. He was born in 1827, graduated at Marietta college in the same state in 1848, and then went south to Port Gibson in

¹Senate Journal, 1875-6, 17; Davis' Political Conventions, 355, 356.

Mississippi and taught school there until the autumn of 1851. In the spring of 1852, he sailed from New York for California in the ship *Pioneer*. Upon arriving at San Francisco, he again took ship for Oregon, but returned to San Francisco in 1853 and went into the lumber business at Market street wharf. In the autumn of 1854, he removed to Siskiyou county and for a few years engaged in merchandising. Later he turned his attention to politics and purchased the *Yreka Union* newspaper, which he owned and edited until he became governor. In 1860 he was elected from Siskiyou county to the assembly, and re-elected in 1861. At the legislative sessions of 1869-70 and 1871-2, he served as state senator and again in that of 1873-4, at which session he was chosen president pro tempore. On February 27, 1875, when Booth resigned and Pacheco became governor, Irwin became lieutenant-governor and took Pacheco's place as resident director of the state prison at San Quentin. He was large, strong and presentable in person. Though not brilliant, nor much of a speaker, he was dignified in deportment, a fair writer, a strict party man and an active politician. When he reached the gubernatorial chair, therefore, he had had considerable tuition in public affairs and a long legislative experience. He was inducted into office on December 9, 1875, and on that day read before the legislature, assembled in joint convention, his inaugural address.¹

After a few introductory remarks, he called attention to the inequality of taxation throughout the state, and attributed it to recent decisions of the supreme court holding that the state board of equalization could not change or equalize assessments made by county assessors. He therefore recommended an amendment of the constitution committing the mode of assessing property and collecting taxes to legislative discretion. While in favor of enlarging the power of the legislature in that respect, however, he considered the restriction of it in reference to the creation of debts as highly beneficial; and, contrasting the healthy condition of the state finances produced chiefly by that inhibition with the substantially bankrupt condition of many of the counties, he thought the constitutional prohibition should have extended to counties and cities and, in the absence of such

¹ Senate Journal, 1875-6, 24; Davis' Political Conventions, 600.

constitutional provision, recommended that the legislature should refuse authority to them to create debts beyond a fixed, small percentage of their assessment rolls. In the same connection, he congratulated the state on the constitutional clause preventing it from loaning its credit or becoming a stockholder in corporations, and deplored the fact that it had not been extended to counties and cities. He next adverted to the railroad question. Referring apparently to the great national roads of the western country of his early life, he said it had once been considered a part of the duty of the government to provide wagon roads, and he could not see why it was not equally its duty now to provide railroads, which were the highways of the present as wagon roads had been of the past. But until so provided, he considered that railroad corporations ought to be held to be agents of the government and charged with the performance of their duty to the public in preference to what they owed to private stockholders; and he suggested the erection of a railroad commission, which would of course have no legislative power but could and should correct abuses, by compelling obedience to the laws in that behalf passed or to be passed.¹

He regarded irrigation as a necessity in many portions of the state and thought it could be best secured by dividing those portions into separate districts, each having the same source of supply; by providing for the appropriation by the districts of such waters as might be required or, if already appropriated, for the purchase or condemnation of them, and by declaring each separate part of a district entitled to its pro rata share of the water. Each district should be required to bear the expense of its own irrigation; but there might be questions as to the distribution of the burdens in the districts, and as to them the legislature should determine. He next spoke of the state prison and thought it should be made more nearly self-supporting. For the two years ending June 30, 1875, the earnings of the prisoners were nearly forty-nine per cent of the current expenses, and with proper management the percentage could be much increased; but it was as yet uncertain whether more could be made by granite-cutting at the unfinished prison at Folsom or by the shops

¹ Senate Journal, 1875-6, 20-26.

at San Quentin; and one or the other should be encouraged according to what might be learned on further experience. At the same time, he thought a portion, not exceeding ten per cent, of the earnings of each prisoner should be set aside as a fund, to be paid him at the end of his term or sooner if by good conduct he should merit being so rewarded. He then turned to those worse than state prison felons, the unconvicted embezzlers of public moneys and violators of public trust, and declared that "the impunity, or at least apparent impunity, with which public officers have appropriated to their own use the public funds by a gross and almost open violation of the trusts committed to them has apparently impressed on the lower grade and even average public mind the conviction that to rob the government is legitimate, and that not to do so, when one has the opportunity, argues the lack of enterprise and business talent—not the possession of a quality for which he is entitled to public respect. That a sentiment of this kind does exist to an alarming extent, in certain strata of society, no close observer of social phenomena can doubt. No more can any one capable of the simplest form of reasoning, of following causes to their immediate effects, doubt that such a sentiment, if permitted to grow and spread and perpetuate itself, must result in the utter demoralization and ruin of society. Society, therefore, is bound in self-protection, in self-preservation, to check the growth of this sentiment and to crush it out utterly. How can this be done? I answer, only by pursuing and hunting down with tireless energy and punishing with remorseless vigor the guilty violator of a public trust. Sympathy may plead for the overtaken, prostrate and crushed criminal; but the great interests of society, when supported by the demands of justice, may not be ignored nor imperiled out of deference to a mawkish sentimentalism, which is shocked at all punishment, however just, of individuals."¹

He believed it to be as much the duty of the state to advocate or see to the education of its children as it was its duty to see that they were all properly fed and clothed. But he claimed that the state should not force into the schools studies that were obnoxious on account of religious teachings to any portion of

¹ Senate Journal, 1875-6, 26-31.

the citizens. He believed that the state had acted wisely in adhering to hard currency. It had always been a hard money state, its circulating medium being gold and silver. And he hoped it would continue so, and that the general government itself would soon resume specie payments. He was of course opposed to Chinese immigration, but recommended a modification of the Burlingame treaty as the only sure remedy against it. And in conclusion, he promised to cordially co-operate in every effort to reduce the expenses of the state, county and municipal governments to the lowest scale compatible with vigor and efficiency of administration.¹

One of the first notable occurrences of the legislature of 1875-6 was the withdrawal on December 10, by R. S. Carey, of proceedings contesting the seat of Creed Haymond as a senator from Sacramento county. He gave, as his reasons for this unusual but in this instance doubtless praiseworthy step, that he was unwilling to permit either personal or party considerations to stand before what he considered the best interests of the people. The contest, he said, if continued, would involve the outlay of much public money, work a hardship upon great numbers of witnesses, might possibly be prolonged through almost the entire session, and would greatly embarrass and impair the usefulness of the incumbent, who held the certificate of election, and to no small extent deprive the county of the services of a senator.² Another notable occurrence was the adoption in the senate a few days later of a preamble and resolution, introduced by Thomas H. Laine of Santa Clara county, dispensing with the services of a chaplain on the ground that no expenditure of public money should be made that was not necessary for the public good or for any purpose for which a tax could not legally be imposed; that the constitution as well as spirit and genius of all the institutions of California inhibited any union of church and state and any discrimination in favor of any religious creed; that prayers of faithful and godly men were being offered up in all parts of the state for the legislature as well as all other public officers and servants; that the appointment of a chaplain was

¹ Senate Journal, 1875-6, 31-35.

² Senate Journal, 1875-6, 40.

unauthorized by any law; that it was not only unnecessary and expensive but also involved a preference of some particular creed, fostered a spirit of rivalry and contention, bred animosity and heart-burnings, lowered the dignity of the ministry to the arena of party politics, destroyed the solemnity of prayer by reducing it to a mere formula, and made an invidious distinction between different departments of the government by giving one a chaplain and another not. Subsequently in the assembly a resolution, introduced by James E. Murphy of Del Norte county, was adopted abolishing the office of chaplain of that house. This was not the first time the legislature, or one or the other branch of it, had dispensed with a chaplain; instances had frequently occurred before; but it was the first time the reasons for such dispensation were so concisely and forcibly urged. Still another occurrence of this session, that may be called notable, was the appointment by the governor of Henry George, who afterwards attracted attention as the author of a book called "Progress and Poverty" and enunciator of what was called the "single tax" doctrine, to a small office known as that of "inspector of gas meters." The appointment was unanimously confirmed by the senate; and George, doubtless constrained by his necessities while lucubrating his new ideas on political economy, accepted it.¹

The first bill approved by Irwin was to prevent changes in the text-books used in the public schools. In the educational department throughout the state, as well as in other departments, there were then, as there have been since, men whose object was to make money out of their position. It made no difference to them how they made it; and for that reason there were various crooked methods of corruption, requiring constant vigilance to keep even with them. At this time the evil to be met was the change nearly every session of text-books, brought about chiefly by corrupt combinations of book-sellers and school trustees, necessitating the purchase several times a year of new school books. It was to put a stop to these shameless practices—which however was only partly accomplished—that the act was designed and pushed through with so much expedition.² Another senate bill, pushed

¹ Senate Journal, 1875-6, 60, 64; Assembly Journal, 1875-6, 293.

² Senate Journal, 1875-6, 99.

³ Senate Journal, 1875-6, 55; Stats. 1875-6, 1.

through this legislature with considerable haste though not without opposition and which afterwards, instead of meeting with favorable acceptance, excited violent condemnation, was an act, introduced by George H. Rogers, to authorize the city and county of San Francisco to provide and maintain public water works, and commonly known as the "Rogers' bill." Though probably well intended, it seems to have been crudely drawn, without proper guards, and its opponents claimed that it might easily lead to the bankruptcy of the metropolis. However this may have been, it is certain that the San Francisco people were so determined and active in their opposition that nothing was or could be done under the act; and a few years subsequently the San Francisco legislative delegation was pledged in advance against it; and its repeal was the first act of the legislature of 1880.¹

Another act of great importance to San Francisco passed at this session was the so-called Dupont street widening act. Several of the old streets of the city, laid out originally by Vioget in the Yerba Buena village days, including Kearny and Dupont streets, were found to be much too narrow. In 1866 a remedy was applied, so far as the business portion of Kearny street was concerned, by an act for its widening, which afterwards in the course of a few years took place and proved a great success. It was not only of benefit to the city but, being carried out with justice and economy, it also, notwithstanding some resistance, gave general public satisfaction. The good results thus accomplished induced the starting of other street projects for the city, claimed to be equally beneficial but which turned out to be the prolific cause of long and bitter litigation, very costly to the citizens. One of them was an act of 1872, for the opening of a new street running across blocks from the then business center of the city to North Beach and to be known as Montgomery avenue. That thoroughfare was accordingly opened—the property taken being paid for in what were known as Montgomery avenue bonds, the validity of which was a question of contention in the courts for many years, with the general current of decisions against them. It has always been a matter of doubt in some quarters whether the opening of Montgomery avenue did not, like the cutting of

¹ Senate Journal, 1875-6, 293, 317, 358; Stats. 1875-6, 501; Stats. 1880, 1.

Second street through Rincon Hill in 1869, do more harm than good: certainly neither accomplished what was predicted by their projectors. On the other hand, the widening in the business portion of the city of Dupont street, afterwards called Grant avenue, was a valuable improvement. There were bonds in this case as in the other. But in the proceedings leading to their issuance and distribution, there were said to be, and doubtless were, many frauds; and the subsequent litigation over the Dupont street bonds was even longer, more determined and more costly than that over Montgomery avenue bonds, with some decisions for and some against them.¹

An effort at retrenchment was made at this legislature; but it was rather in reference to extraordinary outlays than to the oppressive regular expenses of state, county and municipal governments. A bill to renew John A. Sutter's annuity for two years longer was defeated, though that of James A. Marshall was continued.² A senate bill for an appropriation to aid exhibitors from California at the Philadelphia centennial exposition raised the question of the legality and propriety of such expenditures, and elicited much discussion. On the one hand, it was argued that there was no constitutional prohibition against such an appropriation, while policy, patriotism and state pride were in favor of it. Should California, it was asked, "the most favored state of the Union, inferior to none in natural resources and, in proportion to her age, the peer of any in advancement," lag behind on such an occasion? Should we "tarnish our reputation and, instead of sustaining and defending our character for energy, enterprise and liberality, sink into parsimonious disrepute"? On the other hand, it was argued that the centennial exhibition was only a great private enterprise and should be sustained solely by the liberality and wealth of private individuals; that to apply public funds to such enterprises would be vicious legislation, since it would establish an example for other assaults on the treasury and expose it to be depleted by means wholly foreign to the purposes of taxation; that taxes could be legally collected only for objects within the purpose for which governments were established—of which

¹ Stats. 1865-6, 37; 1871-2, 911; 1875-6, 433.

² Senate Journal, 1875-6, 501; Stats. 1875-6, 681.

the centennial was not one—and that therefore the proposed act would be an unwarranted and abusive exercise of legislative power, and in effect an appropriation of the private property of some citizens for the use and advantage of others. This reasoning, though the bill passed the senate, seems to have killed it in the assembly, and it failed.¹

Lieutenant-governor James A. Johnson in his inaugural remarks as president of the senate had said that the senators, elected on the Democratic platform, were pledged "that a proper freight-and-fare bill should be passed; that a proper irrigation scheme should be devised; that the school fund should be cared for, and that everything mentioned in our platform, to which we are pledged, should be carried out." The response to these pledges, in so far as there was any, was two acts—one for the appointment of commissioners of transportation to fix the maximum charges for freights and fares on railroads, and the other to create an irrigation district, to be called the west-side irrigation district.² As a matter of fact, however, neither accomplished any important purpose; and it was left for the approaching new constitution and future legislatures to wrestle with the very large subjects thus proposed. Several other questions of equally great moment cropped out at this session, but were also left unanswered. One was presented in a petition of citizens of the upper Sacramento valley asking for relief against the *débris* from hydraulic mines; another in reports in each house against the evils of land monopoly and particularly the disposal in immense tracts of domain under what were known as the timber and desert land acts of congress.³ Still another subject of vast importance, that had to be left for the future, was presented in a bill "to save the vineyards and extirpate the phylloxera."⁴ There were also introduced at this session of the legislature two other subjects, the agitation of which may perhaps have been demanded by the condition of the times; but which under any circumstances were the fruitful sources of much future wrangling and damage to the state. One, purporting to be a resolution of inquiry as to Chinese

¹ Senate Journal, 1875-6, 425, 480; Assembly Journal, 1875-6, 639.

² Senate Journal, 1875-6, 6, 20, 21; Stats. 1875-6, 731, 783.

³ Assembly Journal, 1875-6, 275, 602; Senate Journal, 1875-6, 70.

⁴ Assembly Journal, 1875-6, 552.

immigration, led to the erection of a tribunal which sat for some months under the name of a senate committee of investigation, whose special occupation it became to manufacture anti-Chinese thunder and furnish pabulum for the future demagogues of the San Francisco "sand-lots."¹ The other was a bill recommending the calling of a convention to revise and change the state constitution, which provided in accordance with law that the question should be submitted to popular vote at the next general election. This bill, which passed both houses by large majorities, was approved by the governor and became a law on April 3, 1876, the last day of the session.²

Irwin's vetoes may not have been so frequent as those of his predecessor; but they were equally successful, at least at this session of the legislature; and several of them were very able. The first particularly, disapproving an act concerning St. Luke's hospital association, which he considered an attempt to create or at least enlarge corporate rights, powers and franchises by special act and therefore inhibited by the constitution, gave as reasons for such inhibition that the charters of corporations of that character should not under any circumstances or in any event contain the elements of a contract; that they should therefore always be subject to change or modification by subsequent legislatures, and that all corporations formed for the same purpose should possess the same rights, powers and privileges and be subject to like disabilities and burdens. This veto was sustained by a vote of thirty-one as against one. Another veto was of a bill enabling the board of supervisors of Sacramento county to refund to James McClatchy certain moneys claimed to have been wrongly paid by him as tax collector into the treasury. It appeared that it depended upon the construction of a statute whether he should have paid or not; that the supervisors at the time claimed the payment and McClatchy acquiesced, and that subsequent supervisors and tax collectors took a different view of the statute. Upon this state of facts, Irwin said that the determination of the question involved was for the judicial and not for the legislative department of the government, and that the act,

¹Senate Journal, 1875-6, 615, 633.

²Senate Journal, 1875-6, 632; Stats. 1875-6, 791.

which was in fact an attempted legislative construction of the statute, was clearly unconstitutional; and he suggested that all the legislature could be asked to do was to enable McClatchy to sue Sacramento county. This reasoning being accepted as satisfactory, the veto was unanimously sustained; and a day or two afterwards a new bill was introduced and passed authorizing a suit as suggested. Still another veto was of an ill-advised amendment to an act concerning a toll-road in Sacramento county, ostensibly intended to give to certain residents the right to travel free but in fact taking away from other residents the right already possessed. This veto also was unanimously sustained. In addition to these there was a veto of a bill, clearly unconstitutional, restricting the elective franchise in a levee district of Sutter county; a veto of a proposition to allow all charitable corporations to hold unlimited quantities of real estate in perpetuity the same as literary, scientific and educational corporations; and a veto of a proposition requiring a unanimous vote of the city council of Oakland to allow cars to be run on the public streets, while the general law required only a two-thirds vote. In all these cases the vetoes were sustained.¹

By the time the legislature of 1875-6 adjourned, the agitation for the presidential election of 1876 had commenced. The Republican state convention met at Sacramento on April 26 and the Democratic state convention at San Francisco on May 24. Both adopted resolutions of principles and selected twelve delegates—the Republicans to the Republican national convention that was to meet at Cincinnati on June 14, and the Democrats to the Democratic national convention that was to meet at St. Louis on June 27. After those conventions had been held, the Republicans, though generally partial to James G. Blaine as their standard-bearer, “heartily indorsed” the convention nominations of Rutherford B. Hayes and William A. Wheeler for president and vice-president; while the Democrats “unqualifiedly ratified” the nominations of Samuel J. Tilden and Thomas A. Hendricks for the same offices. At the election on November 7, 1876, upon counting up the votes, it was found that the state had gone for

¹ Senate Journal, 1875-6, 440, 441, 567, 568, 627, 628; Assembly Journal, 1875-6, 441, 527, 699.

the Republicans—their vote for electors being about seventy-nine and a quarter thousand, while that of the Democrats was about seventy-six and a half thousand. At the same election, the Republicans Horace Davis, Horace F. Page and Romualdo Pacheco and the Democrat John K. Luttrell were elected congressmen. The majority for Pacheco, however, was only one over his Democratic opponent P. D. Wigginton; and the Democratic secretary of state, on account of alleged irregularities in the returns, refused to issue him a certificate of election until compelled to do so by a peremptory writ of mandate from the supreme court of the state. Pacheco took his seat as congressman on December 3, 1877; but Wigginton instituted a contest, with the result that on February 8, 1878, he was given the seat and served out the remainder of the term.¹

On October 1, 1876, in the midst of the turmoil of the presidential campaign of that year, but less affected by political excitement then or at any other time probably than any other man of large property in the country, died James Lick, the great philanthropist. This remarkable man was born on August 25, 1796, at Fredericksburg, Lebanon county, Pennsylvania. He was a son of poor parents and had no prospects of getting a living except by hard work. Very early he learned the trade of a cabinet-maker and managed to pick up a scanty education. While still young, but with habits of industry and particularly of the strictest economy fully formed, he left Pennsylvania and emigrated to Chili or to what was then popularly known as the "Golden South Americas."² There he succeeded in accumulating some thirty thousand dollars, with which, mostly in silver coin, apparently anticipating the result of the Mexican war, he sailed by way of the Hawaiian Islands for California and arrived at San Francisco in December, 1847. Almost immediately upon landing, he commenced investing his money in town lots, then very cheap, getting some by direct alcalde grants and purchasing others for small advances on the original alcalde figures. Among his property, thus acquired, were the one-hundred-vara lot on portions of which the California Academy of Sciences and

¹ Davis' Political Conventions, 356-365.

² See "The Cricket on the Hearth," by Charles Dickens.

Society of California Pioneers afterwards erected their halls, the fifty-vara lots on which the Lick House was built and many other lots in the business center of San Francisco. He also bought property in and in the neighborhood of San José; and on one of these purchases, situated on Guadalupe creek between San José and Alviso, which for years became his residence, he erected a water-power grist-mill, famous not only for the excellence of its flour but more especially so for the fact that most of its inside machinery timbers were made of solid mahogany. It has been reported that when a young man, before he left Pennsylvania, Lick was refused the hand of a well-to-do miller's daughter on the ground that he had no property or expectations equal to those of the lady; that a quarrel ensued and Lick went off, vowing the day would come when he would build a mill of his own that would open the eyes of the purse-proud Pennsylvanian grist-grinder with astonishment; and that the famous "Lick's mill," built of mahogany partly at least with that object in view, effectually accomplished his purpose and fulfilled his vow. At the same place, he afterwards planted an extensive orchard and garden, in which nearly every kind of tree, shrub or vegetable imported into the state was cultivated. He also erected a magnificent mansion, almost as famous as the mill but for the different reason that it was never used or occupied; and among the outside structures that were to beautify the grounds was a large and splendid conservatory of tasteful architecture, constructed of iron and glass and calculated for the cultivation of tropical exotics, which however, instead of remaining there, was subsequently purchased by a number of public-spirited gentlemen and erected by them as a gift to the public in Golden Gate Park in San Francisco.

Notwithstanding a few costly expenditures of the nature thus indicated, and a few losses inseparable from a large business, Lick rapidly grew rich. His mill yielded profitable returns, and much of his city property, which he improved, paid immense rents. In 1862 he built the Lick House on Montgomery street in San Francisco, one of the most magnificent hotels of the day. The dining-room of this house, completed a year or two afterwards and containing much of Lick's own personal handiwork, was

supposed at the time to be one of the most beautiful banqueting halls in the United States. Not only the Lick House but nearly all his other investments turned out well—some of his property increasing several thousand fold more than it cost him. He seldom or never speculated in anything except real estate; and in the meanwhile he continued to live, as he had started out in life, with the most rigid economy. Without apparent consideration of his great wealth, being strong, wiry and of large capacity for endurance, he worked and labored from early dawn till after sundown; lived in so small and common a house that some called it a hovel; ate the plainest of food except such as he raised in his own orchards and gardens; wore the coarsest and cheapest of clothing; attended no social gatherings except once in a while a dinner in memory of Thomas Paine, of whom he was a great admirer; joined no order, society or club; spent no money on amusements or mere appearances; and in short attended strictly to his own business, refusing to take any part in what he thought did not concern him, and absolutely careless and indifferent as to what other people thought or said about him. In a bargain he was quick-witted and long-headed and of all things hated most to be overreached; he expected those with whom he dealt to keep their contracts to the letter; and on his own part he was always ready to fulfill his engagements and pay what he justly owed. Though men of somewhat the same general character in these respects were not infrequent in the old states, and there were a few examples more or less similar in California, they were not so wealthy or prominent and did not attract such general attention. In Lick's case, the fact of his owning so much of the most valuable property in San Francisco and other places in the state kept his name continually talked about; and, his character being so contrary to the wasteful and extravagant community around him, it was not unusual in some quarters to call his economy parsimony and his frugality avarice.

But there was one thing in which Lick differed from and rose superior to all other men in the country, and perhaps in the United States. This was philanthropy. Other men may have spent as much money for public purposes; but there was in almost all these cases a holding on to the very last moment or

the accompanying exhibition of a selfish strain that takes away much of the admiration that would otherwise be felt for them. Some have wished to circumvent hungry, hated or unworthy relatives; some to continue a monopoly; some to extend a special influence; some to perpetuate a name. Lick on the other hand seems to have contemplated the dedication of all he possessed, and all he could rake and scrape together, to philanthropic purposes of the most exalted kind, from a very early period and with no reference to any selfish object. He had never been married and had no family except a natural son, said to be the child of the Pennsylvania miller's daughter, whose father had driven him off and who herself did not see proper to follow his fortunes. This son, whom he afterwards sent for and employed at his place on Guadalupe creek as an assistant, though perhaps without vices, was certainly without any noble virtues and totally unfit to be the dispenser of a fortune. Lick was not and could not be proud of him. He had also some collateral relatives; but they were all rustic, unrepresentable and utterly unacquainted with the use of money and the ways of the world. Under the circumstances, he almost from the start of his fortune, as has been stated before, contemplated devoting it, or the great bulk of it, to the benefit of mankind in general and particularly that portion which constituted the people of California. He had always had a very high respect for the Society of California Pioneers, which he thought a beneficent association, calculated to do much good and of which he was president for a number of years before his death; but he had also in the course of his experience acquired a great admiration for science; and, upon deep consideration, having made up his mind that the greatest good to mankind would be promoted by its cultivation, he determined to leave the bulk of his wealth to scientific purposes. There may possibly have been in this determination a desire to be remembered; but if so it was a modest wish and was never obtruded or put forward offensively by himself. Everything in fact about his movements indicated a pure, unselfish, disinterested, benevolent, highly-enlightened philanthropy; and the more all the circumstances are considered, the more excellent, sublime and worthy of admiration appears the man who could and did so act.

In 1874, after having previously given a lot and building on Montgomery near Jackson street in San Francisco to the Society of Pioneers and attempted to convey other valuable property on Market and Fourth streets in San Francisco to that society and the Academy of Sciences, he deeded all his property, then valued at three millions of dollars, to a board consisting of Thomas H. Selby and six other persons in trust to erect and equip an observatory and for other philanthropic purposes—much like the conveyance about to be mentioned, which took its place and became effective. In 1875, becoming dissatisfied with Selby, he requested him to resign; and Selby expressed a willingness to comply, but subsequently, after consultation with his associates who objected, declined to do so—as did afterwards all the trustees as a body when requested. Lick thereupon published a revocation of his trust deed and cautioned the public against dealing with the trustees. Selby and his associates in reply, finding that their efforts to hold in opposition were vain and their authority over the trust property was weakened and in effect destroyed, commenced a suit to be released and have their accounts settled, to which Lick assented; and the controversy, which at one time threatened a long and desperate litigation, was amicably settled. Lick thereupon made new and effective deeds to the Academy of Sciences and Pioneers of the lots attempted to be conveyed before, and on which they built their imposing halls; and on September 21, 1875, he executed a new and effective deed of all his remaining property to Richard S. Floyd, Faxon D. Atherton, John Nightingale, Bernard D. Murphy and his son, John H. Lick, whom he had in the meanwhile legitimized, in trust to expend seven hundred thousand dollars in building an observatory, equipping it with the most powerful telescope in the world and turning it over for public use in charge of the University of California; five hundred and forty thousand dollars in establishing a mechanical arts school in San Francisco; one hundred and fifty thousand dollars in erecting a free bath house and a like sum for an old ladies' home also in San Francisco; several hundred thousand dollars in endowing and building various orphan asylums and other institutions for charity or the alleviation of suffering indigence and to set up various works of sculptural art,

including a statue to Francis Scott Key, the author of the Star Spangled Banner, and a monument in front of the San Francisco city hall representing the history of California; and, after the payment of a number of very liberal bequests and legacies to all his relatives, including one hundred and fifty-three thousand dollars to John H. Lick in lieu of three thousand dollars previously intended to be given, to divide the residue equally between the Academy of Sciences and the Society of Pioneers.

Subsequently and but a short time before his death, becoming dissatisfied with his new trustees, except Floyd who was absent in Europe, because they declined to make certain dispositions which he desired but which they considered themselves unauthorized to carry out, he required their resignation—a right to do which he had reserved in his second deed of trust—and thereupon appointed four other persons, Edwin B. Mastick, William Sherman, George Schoenwald and Charles M. Plum, who with Floyd constituted the last board of trustees. This board, in the course of the next nineteen years, worthily and successfully carried out all Lick's grand and beneficent designs—disposing of all the property, which in the meanwhile had kept on increasing in value, at much larger prices than had been anticipated; building and equipping the world-wide celebrated "Lick Observatory" on Mount Hamilton in Santa Clara county; delivering over the various sums devoted to other boards or persons for other establishments or institutions; paying off in full all the bequests and legacies, including over half a million of dollars by way of compromise to John H. Lick, who as the wise old philanthropist had been disposed to fear afterwards made trouble, and finally dividing about a million of dollars between his twin favorites' and residuary legatees, the California Academy of Sciences and the Society of California Pioneers, which expended most of the sums thus given them upon their before-mentioned buildings and thus reared, as well as others, fitting monuments to the memory of the great donor.

Meanwhile the legislature, next after the presidential election of 1876 and the last under the old constitution, met at Sacramento on December 3, 1877. On December 6, as soon as the houses were fully organized, Irwin sent in his biennial message. He

characterized the year 1876 as prosperous, but 1877 as one of drought, partial failure of crops, general depression, riotous proceedings against the Chinese, and almost universal dissatisfaction and disturbance. The financial condition of the state was not bad, though taxes were increasing; and, on account of a recent decision of the supreme court to the effect that taxes on mortgages and solvent debts were unconstitutional and invalid, the rates would have to be advanced still higher. But the matter which he seemed to consider of most serious import in relation to the revenue was a decision of the supreme court in substance overturning the state board of equalization. And he urgently recommended that the new constitution—which he had done so much to bring about—should provide or authorize the legislature to provide for such a board. To the new constitution also, which he seemed to regard as a panacea for all ills, he recommended a reference of the subject of the enlargement and management of the state prison—evidently thinking that the needs of that institution were rapidly increasing. At the same time, he appears to have done quite as much as any other governor to empty the prisons by exercising the pardoning power in very many cases, not excepting that of John J. Marks, which occasioned much public adverse comment. But it seems, in reference to pardons in general, that he was very much dissatisfied, even with himself. Much of his pardoning had been done on the theory that sentences were too severe, simply because they were severer than in other cases of supposed similar nature; and he therefore recommended that in some way or other sentences should be equalized, and that the pardoning power should be destroyed. “The exercise of the pardoning power by the executive,” he said, “is wholly unsatisfactory to all parties concerned—to the criminals as a body, to their friends, to the community at large and—more than to any one else—to the executive himself.”¹

In regard to the riotous proceedings against the Chinese and other disturbances previously referred to, Irwin was in reality speaking of the violent and menacing demonstrations of what was known as the “sand-lots” excitement, which had recently started among the lower classes of San Francisco, had grown

¹ Assembly Journal, 1877-8, 12-19, 29-31.

protect depositors in savings banks and stockholders in mines; but, at the same time, he recommended that all transfers of mining stocks should be taxed, on the somewhat singular ground that most of them were for purposes of mere speculation, productive of more terrible and wide-spread evil than even gambling, and that they ought therefore to be made a source of revenue to the state.¹

But the most important subject adverted to by Irwin in his message was the fact, that at the election held on September 5, 1877, a majority of the electors of the state had voted for the calling of a convention to revise and change the constitution, and that it was the duty of the legislature to provide for such convention. There was, as a matter of fact, some doubt about whether there had been a majority of such votes; the returns of a number of the counties on the subject were very defective; and even so late as February 11, 1878, more than two months after the transmission of the message, it was impossible to tell the exact state of the vote of Humboldt and San Diego counties. There therefore had to be an estimation of the total vote of those counties, counting which it was reported that the total number of ballots cast at the election had been one hundred and forty-six thousand one hundred and ninety-nine; those for the convention seventy-three thousand four hundred and sixty; those expressly against it forty-four thousand two hundred and fourteen; those silent on the subject, and therefore not for it, twenty-eight thousand five hundred and twenty-five—thus leaving an expressed affirmative majority for it of three hundred and sixty. On the strength of this report, which though vague and unsatisfactory was not contested, an act for the convention was introduced into the assembly; and after considerable controversy it was finally passed and approved by Irwin on April 1, 1878, the last day of the session.²

On the second day of the session, the special committee, appointed by the last senate to investigate the Chinese question, presented its report. It was very voluminous. As was expected, and in fact perfectly well understood beforehand, it was violently

¹ Assembly Journal, 1877-8, 25, 26, 36-42.

² Assembly Journal, 1877-8, 42-44, 340, 829; Stats. 1877-8, 759.

anti-Chinese in character and suited so well the popular prejudices on the subject that twenty thousand copies were ordered printed. Matters had advanced so far that nobody, and particularly nobody that held or ever expected to hold office, dared say a word in favor of the Chinese; but on the contrary nearly everybody, and the Republicans as well as the Democrats, seized every opportunity to make public profession on the anti-Chinese side. The special committee were not only liberally paid for their services, but were tendered thanks for the able manner in which they had performed them. And almost immediately after the presentation of their report, besides numerous resolutions of various language and character but all directed against Mongolians and intended to keep them out or drive them off, a bill was introduced, and hurried through so rapidly as to receive Irwin's approval on December 21, 1877, providing for the ascertainment of the will of the people on the question of Chinese immigration, by vote at the next state election.¹

There can be little or no doubt that the mainspring of the anti-Chinese movement was the riotous sand-lots agitation; but the sand-lots agitators had other subjects of complaint besides the Chinese. They had merely adopted the anti-Chinese shibboleth, which had been more or less used ever since the days of Governor Bigler. They were also opposed to capital or rather to anybody's having more money than they had, and wished, as they expressed it, to compel wealth to disgorge. One of their most effective cries in this direction was against the holders of large tracts of land, or what they called land monopoly. Creed Haymond of Sacramento, who had placed himself at the head of the anti-Chinese movement in the legislature and had been chairman of the special committee on Chinese immigration, attempted, in much the same manner, to place himself at the head of the anti-land-monopoly movement. For this purpose, as early as the third day of the session, he introduced into the senate a resolution to the effect that no man should be allowed to dispose by will of more than one thousand acres of land, and that, if he had more at the time of his death, the excess should pass to the state. Whatever may have been Haymond's inten-

¹ Senate Journal, 1877-8, 6, 27, 28, 33, 68, 431; Stats. 1877-8, 3.

tion with his resolution, it was immediately seized upon, worried by amendments and altered into the harmless declaration "that the policy of permitting the state lands to be monopolized in the hands of the few, at the expense of the many, is subversive of the rights of the people and ruinous to the best interests of the state."¹ On the other hand George H. Rogers of San Francisco renewed the fight of the previous session against the wholesale disposition of public lands under the timber and desert land acts and demanded that no government land should be disposed of except to actual settlers and in limited quantities. A resolution to that effect was adopted;² and not long afterwards in the assembly, as if in support of the general proposition, it was stated that one individual, evidently referring to James B. Haggin, had not only acquired in Kern county, under the so-called desert land act, one hundred and eighty-seven thousand acres; but it was also alleged that the assessor of that county had fixed the valuation of such lands below those of similar character in the immediate neighborhood, held by settlers in small quantities. An investigation being ordered, it appeared from the testimony that the assessment was lower; but there was nothing shown to prove it incorrect; and the matter dropped. Several other measures, that might also be more or less attributed to the influence of the sand-lots, were attempted to be put through at this session but for the time failed—only, however, to be adopted afterwards. One was a bill for a labor bureau, and another a resolution to tax uncultivated land as high as cultivated land of the same grade.³

But notwithstanding the overshadowing influence exercised over some of the legislators by the sand-lots, there were several very excellent acts passed by the legislature of 1877-8. One of these limited street-railroad fares in cities of more than one hundred thousand inhabitants to not more than five cents for trips of any distance in one direction. Another, introduced by the same author and usually known as the "McCoppin one-twelfth act," provided that no greater amounts or liabilities against the San

¹ Senate Journal, 1877-8, 12.

² Senate Journal, 1877-8, 73; Stats. 1877-8, 1065.

³ Senate Journal, 1877-8, 285; Assembly Journal, 1877-8, 113, 241, 290, 291, 529.

Francisco treasury should be authorized, allowed, contracted for, paid or made payable, in any one month, than one-twelfth of the total amount allowed by law to be expended within the fiscal year, of which such month was a part, except an unexpended surplus of a previous month—making contracts and authorizations in violation of the act void and subjecting violations to severe punishment.¹ Another was an act to regulate the quality and reduce the price of gas to not exceeding three dollars per thousand feet. Another act, calculated to suppress a crying and disgraceful evil which had become very prevalent, was designed to prohibit “piece clubs” and prevent extortion upon candidates for office. Another was an act to establish and maintain free public libraries and reading rooms, under which and supplementary acts, every city and nearly every town in the state has been provided with a very full supply of books and periodicals. Another was an act to create the “Hastings college of the law,” a department of the university of California, founded upon a donation of one hundred thousand dollars made for the purpose by S. C. Hastings, first chief justice of the supreme court of the state. And still another—and one of the best—was an amendment to the statute of limitations, contained in the code of civil procedure, to the effect that to establish a valid adverse possession of land, it should be necessary for the claimant to prove payment by himself, his predecessor or grantor of all state, county and municipal taxes levied and assessed upon such land. It was by means of this excellent provision that a very effectual stop was put to the too-frequent frauds practiced by irresponsible persons in squatting upon the lands of others and afterwards claiming them by prescription.²

An act, approved March 29, 1878, on an exceedingly important subject and which led to great expense and much conflict, and whose results may perhaps be considered even yet not altogether determined, created the office of state engineer and was intended to provide a system of irrigation, promote rapid drainage and improve the navigation of the Sacramento and San

¹ Stats. 1877-8, 18, 111.

² Stats. 1877-8, 167, 236, 329, 533.

³ Amendments to Codes, 1877-8, 99.

Joaquin rivers. The object was to ascertain the exact condition of the river beds; what changes had taken place; the cause or causes of such changes, and what was necessary to be done to increase their carrying capacity, prevent damages by flood and preserve their navigability; and in this connection to inquire into the effect of hydraulic mining and the vexed question of mining débris. He was also to ascertain the position and acreage of lands in need of irrigation, divide them into natural districts and by observation and study find out how best to irrigate and improve them. As may well be imagined, the problem was one of very broad extent, which could not be worked out in much hurry; but, at the same time, it was one that had to be met and solved however long it might take; and this act of 1878 was, so to speak, the initiative of the long controversy about irrigation, drainage, débris and interior navigation and how they are to be adjusted and reconciled, which is still pending.¹ Besides this act, which was a senate measure, the assembly appointed a special commission to investigate the débris question, which by this time had begun to assume very large proportions.² In addition, there were several special acts in relation to particular irrigation districts; but they played but little figure in comparison with the engrossing and absorbing interests committed to the consideration of the state engineer, whose office was in fact one of the greatest importance ever created by the legislature.³

The question of freights and fares of railroad companies, which had resulted in the appointment of a transportation commission at the session of 1875-6, again came up at the session of 1877-8; and as that body, chiefly on account of litigation as before stated had not reported, a new act, having the same objects in view but more carefully drawn, was passed. It provided for a new officer, to be known as commissioner of transportation, prescribed very minutely his powers and duties, and repealed the former act. Little more was done under this act, however, than under the other, for the reason that the new constitution of 1879 created an entirely new tribunal, known as railroad commissioners, for the

¹ Stats. 1877-8, 634.

² Assembly Journal, 1877-8, 181, 191.

³ Stats. 1877-8, 468, 820, 887.

determination of all questions relating to the subject and thereby removed it—apparently much to the satisfaction of the corporations interested—from the consideration of the legislature.¹ At this same session, an act was passed creating a board of bank commissioners, whose duty it was made to thoroughly examine at least twice every year all the banks of the state; report their condition, and generally to supervise them for the protection of depositors.² It may be added that among the other acts of this session, and apparently in response to the strange recommendation of the governor before adverted to, was one imposing a tax of ten cents on the issue of every certificate of stock, whether original or on transfer, by a corporation.

It thus appears, even from the acts mentioned, without counting others, that the legislative session of 1877-8 wrestled with a great number of important questions and must have been a very busy one. The governor was also busy, at least more prolific of vetoes, though not so invariably successful, as at the previous session. One of these was of a senate bill to appropriate twenty-five thousand dollars to the Howard Benevolent Association of Sacramento "for the relief of sufferers by the late storm and floods." His objection was that the suffering was not so great as to render the appropriation absolutely necessary, though he was of opinion a moderate appropriation would be unobjectionable. The veto was sustained because only eighteen voted against it to thirteen for it—not two-thirds. Subsequently, an act granting five thousand dollars was passed and approved by the governor. Another veto was of a senate bill to open and improve Seventh street in San Francisco without and apparently regardless of the consent of the municipality; and this was sustained because only seventeen voted against it to fourteen in its favor. Another veto was of a senate bill authorizing the supervisors of San Francisco to ascertain and pay Alfred A. Green what was due, not exceeding twenty thousand dollars, for services rendered in 1856 or at any other time, in establishing the city's pueblo title and causing the rejection of the Bolton or Santillan title. The governor's objections were that, if anything had ever been due, it

¹ Stats. 1877-8, 969.

² Stats. 1877-8, 740, 955.

was outlawed; that it did not appear that Green had ever rendered any service; that, if he had, it was done not to benefit San Francisco but, according to his own showing, to spite the Bolton claimants, and that whatever service he had done was of no service to San Francisco. But for some reason, hard to understand, the legislature by considerably more than a two-thirds vote in each house overruled the veto and passed the bill.¹ There were several other vetoes of senate bills and altogether nine or ten in the assembly, which were sustained, nearly all by large majorities; but the subjects of them were not of very general importance or interest.

Several resolutions, presented at this session, may be noticed as throwing light upon the general character of the legislature. One, which was adopted, recommended the recognition by the United States government of the government of Porfirio Diaz as president of Mexico.² Another, offered in the assembly by Caleb Sherman of Santa Barbara, apparently a red-hot partisan, expressed devotion to Democracy, affirmed that Tilden and Hendricks had been elected and should have been inaugurated president and vice-president of the United States on March 4, 1877, and declared that there was "no language severe enough to characterize that great political crime, the worst of the century, which culminated in the inauguration of a man who was not legally elected president." The resolution, by a vote of thirty-four against twenty-seven, was laid on the table, from which it was never lifted. It had about the same fate of death from inanition as a remarkable, somewhat double-barreled, measure, introduced by William Hanna of Santa Clara, in the form of a bill "to suppress the practice of social drinking at public bars, and to create a revenue from the same that shall be commensurate to the evil it engenders."³

Meanwhile, on account of the fact that the term of Aaron A. Sargent as United States senator was to expire before another legislature, it became necessary to elect a successor. In accord-

¹ Senate Journal, 1877-8, 342, 349, 395, 443, 540; Assembly Journal, 1877-8, 803-805; Stats. 1877-8, 930, 956.

² Stats. 1877-8, 1074.

³ Assembly Journal, 1877-8, 484.

ance with the act of Congress on the subject, the election took place in each house on Tuesday, December 18, 1877. Two candidates were nominated—James T. Farley on the part of the Democrats and Morris M. Estee on the part of the Republicans. In the senate, Farley received twenty-eight votes and Estee twelve; in the assembly, Farley fifty-four and Estee twenty-four. John F. Swift asked to be excused from voting in the assembly, on the ground that he had been elected as an independent candidate and for a special purpose—understood to be the fixing of water-rates in San Francisco—by both Democrats and Republicans, after assuring them that no action of his should injure either in the election of a United States senator, and that he therefore could not vote for either candidate. As it made no difference whether he voted or not, he was excused. The next day in joint assembly the journals of the two houses were read, and Farley declared elected for the full term of six years, beginning March 4, 1879.¹

¹ Senate Journal, 1877-8, 48, 49, 56-58; Assembly Journal, 1877-8, 120-122, 126-128.

CHAPTER X.

MEEK IRWIN (CONTINUED) 1100

IT was in Irwin's administration that the so-called Workingmen's party, more commonly known as the sand-lots movement and sometimes as the Kearney excitement, had its commencement. The times were exceedingly hard. During the winter of 1876-7 little or no rain fell, less than during any other season since the great drought; there was a general failure of the grain crop, a large loss of cattle on the stock ranges, and a serious decline in the yield of gold. It was said that the damage caused by the want of rain ran high up into the millions of dollars. In the southern part of the state especially, where there was as yet comparatively no irrigation, nearly everything was depressed—notwithstanding the Southern Pacific Railroad Company completed its railway connection between San Francisco and Los Angeles in September, 1876, thus opening up the country to rapid transportation, and extended it to the Colorado river, on the way east by the southern route, in April, 1877. In 1876, on account of the centennial exposition at Philadelphia, there were fewer visitors to the Pacific coast than usual and of course a reduced distribution of money from strangers; and this diminution of travel and consequent absence of travelers' expenditures were kept up the next year by reports of the diminished prosperity and attractiveness of the country, caused by the failure of the accustomed rains. About the same time, the bonanza mines on the Comstock lode in Nevada began to rapidly decline in reputation; the immense monthly dividends of the Consolidated Virginia mine in particular stopped in January, 1877; the California mine declined in the same manner, and the great stock market of San Francisco, which had attracted the attention of the world by its extent and activity and the immensity of its

transactions, rapidly fell away and became almost paralyzed. It was said that there were, at the beginning of 1875, a hundred millionaires in California, many of them worth over five millions of dollars each; but that in 1877 half the number ceased to be millionaires at all, and many were reduced to bankruptcy. Within a couple of years, according to estimation, there had been a shrinkage of nearly a hundred and fifty millions of dollars in the market value of a couple of the leading mines alone, nearly all of which were owned in San Francisco—by which shrinkage everybody was directly or indirectly more or less affected; and the condition of the laboring classes and poor people, who were thrown out of work and could not find employment in the distress of capital, became fearfully grave.¹

In July, 1877, when news came of great labor, socialistic and railroad riots in the eastern states and particularly at Philadelphia, Pittsburg and Baltimore, there was a prompt response in San Francisco. For various reasons and especially on account of recent demagogic proceedings against the Chinese in the legislature, the riotous movement at first took the same direction. On July 23, a Chinese laundry was burned; several others were sacked; and the rioters, emboldened by success, became defiant and threatened to drive out the Asiatics—and with fire if necessary. The police force, consisting at that time of about one hundred and fifty members, was insufficient of itself to stem the mob; and it was very evident, as most of the houses of San Francisco were wooden and there were some three hundred Chinese laundries scattered amongst them, that, if the mob should get control or attempted to carry out their threats, the city would suffer great damage and run the risk of being entirely destroyed. To meet the difficulty, a public meeting of citizens was called on the afternoon of July 24; and the result was the determination to form a protective association under the presidency and control of William T. Coleman, the same person who had been president of the famous vigilance committee of 1856. Coleman immediately took hold and, with characteristic promptitude and ability, soon laid out a plan for the collection of the requisite funds and the organization of a strong force of citizen volunteers, to be

¹ Hittell's San Francisco, 422-424.

known as the Committee of Safety. It was to be a sort of new vigilance committee, composed of people of much the same kind as those of 1856, good, sober, intelligent, well-intentioned and courageous men, imbued and actuated with the same old spirit but acting under different conditions. In 1856 the state and city government were both in weak, if not corrupt, hands, with little or no ability and apparently not a great deal of desire to carry out the purposes of government; and the vigilance committee was obliged, for the purpose of accomplishing anything of value to the community, to set up in opposition to the incumbent officials and the law as it was administered. But in 1877 the state and city had for twenty years been comparatively well managed and the law comparatively well administered; and there was therefore no good reason for any organization except in strict accordance with law and in subordination and aid of the constituted authorities.

Members of the new organization flocked to be enrolled in large numbers. A finance committee solicited money and in a few days collected more than was needed, amounting in all to about seventy-five thousand dollars. Another committee was sent to the various gun shops of the city to gather up arms and ammunition. At the same time, Coleman sent to General McDowell, then commanding the United States forces on the Pacific with his head-quarters at Black Point, asking for the use in case of need of three thousand stand of arms with equipments and munitions. Upon McDowell's replying that he could do nothing without orders from the United States secretary of war at Washington, application was made, through United States Senator Sargent, to that official; and orders came back at once instructing McDowell to cause to be issued by the proper officer at the Benicia armory supplies of whatever kind the committee of safety might require. A requisition being regularly made, seventeen hundred and sixty rifles and five hundred carbines with ammunition and accouterments were shipped to Coleman and afterwards, to some extent at least, used in arming volunteer troops. Coleman also telegraphed to Sacramento for Governor Irwin, who immediately took passage for San Francisco and, after a short consultation, wired to President Hayes, requesting

him to direct the United States vessels at Mare Island to take position in the harbor in front of the city and co-operate in quelling disturbances in case of necessity. To this also there was an immediate affirmative answer; and, as a result, the United States vessels Pensacola, Admiral Murray, the Lackawanna, Commodore Calhoun, and the tug Monterey, with Gatling-guns and other arms, anchored within convenient distance off the city wharves. Thus, within twenty-four hours after the first meeting of the committee of safety, the United States secretary of war had amply supplied it with arms and munitions and, within twenty-four hours afterwards, the United States secretary of the navy had furnished it with ships of war, fully manned and ready for active operations.

On the morning of Wednesday, July 25, Coleman established his head-quarters in a large building on Stockton near Post street, known as Horticultural Hall; and there the work of enrollment, organization and discipline went on. Though fire-arms had been provided and a few companies were furnished with them, he considered it prudent to dispense with their use as far as possible; and, with that object in view, he gave orders for the purchase of six thousand hickory pick-handles, to be used as clubs. He then directed the enrolled volunteers to form into companies of one hundred members; each to choose its own officers, subject to approval and confirmation, and at once to commence drilling; and before night a large and effective force was provided and sent out in detachments for active service as assistants to and under the direct orders of the chief of police. This new force, on account of the weapons it carried, was known and became celebrated as the "pick-handle brigade." That first night, there were about fifteen hundred men of them on actual and important duty; but the total, available force amounted to about five and a half thousand members, who could have been rallied and brought together in an hour or so at the sound of a concerted and well-understood general alarm. As a part of them, there were about three hundred cavalry, who patrolled in the manufacturing districts and outskirts of the city, and a few crews of special police on board vessels along the water front. The ill-disposed, violent and criminal classes were numerous and

desperate and made several riotous demonstrations; but, on every occasion, the committee of safety was on hand and quelled them. Perhaps the greatest danger was from incendiarism, and it required great care and circumspection to guard against it; but there was also danger of the precipitation of bloodshed by almost any kind of hasty or ill-advised action.

On the night of the same July 25, after a day of excitement and disturbance and several encounters, the rioters determined to make an attack upon the Pacific Mail Steamship Company's docks and steamers near the foot of Brannan street, where the Chinese immigrants were landed and which were therefore regarded as choice subjects of spoil. Many threats had been made to destroy this property before. On this occasion, great crowds congregated in the neighborhood and fire was set to several near-by lumber yards. The disorderly elements were out in large force and attempted to interfere with the firemen, who were soon on the ground with their engines; but at the same time with the firemen came many policemen and large numbers of the pick-handle brigade, who at once began to disperse the crowds. There was a general fight for a couple of hours; in the *melée* a number of shots were fired and many stones thrown; a few men were killed, and a number wounded. The chief object of the committee of safety and police was not to kill or maim but to disperse the rioters and drive them off; and in this they finally succeeded. By midnight, the city was again quiet and the disturbers of the peace, on account of their defeat and the immense and effective force which they saw arrayed against them, entirely discomfited, demoralized and cowed down. That night's combat and its results effectually broke the backbone of the riotous movement; and within a day or two afterwards the committee of safety, like the old vigilance committee of 1856, quietly sunk out of sight. It did not disband; it continued ready to respond, if again needed or called upon; but the work it had specially undertaken was finished and well done. On Saturday, July 28, Governor Irwin telegraphed to the United States secretary of the navy the thanks of the state and city for the presence of the war vessels, stating that all danger had practically passed and there was no further need of

them. They were therefore ordered back to Mare Island; but before they went, the United States marines and sailors asked the privilege of a parade in the city, which was accorded them; and that was the only public parade or exhibition, except in the way of actual service, in any way connected with the committee of safety. Thanks were also forwarded to the United States secretary of war for the arms loaned, all of which were accounted for and returned—with the exception of one single pistol that could not be found.¹

Discontent among the laboring classes and particularly those who had been thrown out of employment by the "hard times" still continued. A restless feeling prevailed amongst them. In their great need and greater dissatisfaction they hardly knew which way to turn, and only wanted a bold leader to turn in almost any direction. There was therefore a magnificent opening for a demagogue. And a demagogue of considerable boldness and force, and for a while of extraordinary success, soon appeared. This was Dennis Kearney, an Irish drayman, born in County Cork, about thirty years of age, who arrived in California in 1868 and was naturalized in 1876. In person he was short and stout, what is called thick-set, of coarse features, restless dark eyes, cropped black hair that stood up, quick motions and loud, penetrating voice. He was not a scholar; but he had picked up considerable information from newspapers and political pamphlets, and some practice in speaking at clubs and labor unions, where he would work himself up into a white heat declaiming against capital, monopoly and Chinese immigration. It was said that, on one occasion, he appeared, as a representative of a tradesmen's society, before United States Senator Sargent and urged upon him certain action; that Sargent declined and gave his reasons, which did not strike Kearney as convincing; that he retired, stating he did not see why he could not become as great a man as Sargent, and that he thereupon set to work with a determination to become even greater. However this may have been, he at once threw himself, as it were, into the so-called Workingmen's movement, which had already started, and soon took a prominent

¹William T. Coleman's "Address to the Citizens of San Francisco," August 11, 1877; San Francisco newspapers of the period.

part in it. In August he advocated the organization of a new party, to be called the Workingmen's Trade and Labor Union, which name, however, was at a subsequent meeting changed to that of the "Workingmen's Party of California;" but, on account of the fact that its principal meetings were from about that time held every Sunday afternoon on the then vacant lots in front of the new city hall, it was usually known as the "Sand-lots" party.

On September 21, 1877, a public meeting was held at Union Hall on Howard Street in San Francisco for the avowed purpose of considering the condition of unemployed laborers and providing ways and means for their relief. The first speaker was Philip A. Roach, who in the course of his remarks praised the workingmen; decried the employment of the pick-handle brigade in the recent trouble, and declared that extra policemen in San Francisco were not needed. Kearney also spoke at the same meeting and, after working himself up into a sort of oratorical frenzy, exclaimed that he wanted to see a musket in the hands of every laboring man, and predicted that within one year there would be twenty thousand laborers in San Francisco well-armed, well-organized and well-able to demand and take what they wished "despite the police, the military and hoodlum committee of safety." He not only threatened the Chinese with summary treatment, but also inveighed against the capitalists of the state; gave the names of many; reveled in such terms as "hanging is necessary," "a few fires will clear the atmosphere," and others of similar import, and closed with a declaration that his speech was incendiary and that he intended it to be so. Such talk exactly suited the riotous and anarchistic elements; and Kearney at once took position as a leader amongst them. At a meeting on the sand-lots a few days afterwards he again spoke in much the same strain, only with greater violence, declaring that San Francisco should meet the fate of Moscow, if the condition of the laboring classes were not soon improved, and that bullets were not wanting to enforce their demands. At this intemperate language he was called to order; but the crowd applauded and urged him on; and on October 5, when the new so-called Workingmen's party of California came to be permanently organized, Kearney was chosen president, John G. Day vice-president and H. L. Knight secretary.

The principles of the association, as enunciated by a committee of five persons appointed to formulate them, were "to unite all poor and working men and their friends into one political party for the purpose of defending themselves against the dangerous encroachments of capital on the happiness of our people and the liberties of our country; to wrest the government from the hands of the rich and place it in those of the people, where it properly belongs; to rid the country of cheap Chinese labor as soon as possible and by all means in our power, because it tends still more to degrade labor and aggrandize capital; to destroy land monopoly in our state by such laws as will make it impossible; to destroy the great money power of the rich by a system of taxation that will make great wealth impossible in the future; to provide decently for the poor and unfortunate, the weak, the helpless and especially the young, because the country is rich enough to do so and religion, humanity and patriotism demand that we should do so; to elect none but competent workmen and their friends to any office whatever. The rich have ruled us until they have ruined us. We will now take our own affairs into our own hands. The republic must and shall be preserved, and only workingmen will do it. Our shoddy aristocrats want an emperor and a standing army to shoot down the people." The party proposed, as soon as it got strong enough, to wait upon all who employed Chinese; ask for their discharge, and mark as public enemies those who refused to comply with their request. It further declared that it would exhaust all peaceable means of attaining its ends, but it would not be denied justice while it had the power to enforce its demands. It would encourage no riot or outrage, but it would not volunteer to repress, put down, arrest or prosecute the hungry and impatient who manifest their hatred of the Chinamen by a crusade against "John" or those who employ him. "Let those who raise the storm by their selfishness," it concluded, "suppress it themselves. If they dare raise the devil, let them meet him face to face. We will not help them."

When Kearney was called to order at the meeting of October 5, on account of his incendiary language, it became evident that there was a faction among the Workingmen that was opposed to

him. This faction, which was apparently no better disposed than the Kearney crowd but merely wished to dominate and control the new movement, withdrew for the time and, at the next meeting on the sand-lots, made a separate appearance, having its own stand and speakers. Such action was of course regarded by Kearney as insufferable mutiny; and, in the course of his usual violent harangue to his own adherents against the Chinese and the capitalists, pointing to his rivals, he exclaimed, "You will have to mob those white Sioux and white pigtail-men first. You will have to shoot them down on the streets, before you begin on the Chinese." At this point Kearney's crowd, following out his instructions, made a rush for the stand from which one of the rival orators was speaking and overturned it. It was immediately righted—and again overturned. There was every appearance of a Kilkenny fight then and there; when, by the interference of outsiders and perhaps a little prudent fear of the consequences, the rivals were again separated, and each resumed its own peculiar quality of agitation on its own side of the sand-lots. But, as might be expected, Kearney's superiority in the use of threatening language and vituperation soon attracted the rival crowd; its speakers were silenced, because nobody would listen to them; and Kearney ruled, as it were, supreme. Unfortunately, the city authorities at the time were too much disposed to temporize and parley with the disturbers of the peace; there was an apparent unwillingness to offend too greatly the sand-lots voters, and the newspapers of the day in general and several of them in particular stirred up and spread the disorder by their publications of and comments upon sand-lots occurrences.

One of the San Francisco newspapers of largest and widest circulation, on October 16, 1877, published a manifesto, addressed by Kearney as president and Knight as secretary of the new party to the editor, in which they declared that the Chinese must go; and that it was not altogether sufficient to rely upon votes to drive them off. Congress, they said, "has often been manipulated by thieves, speculators, land-grabbers, bloated bond-holders, railroad magnates and shoddy aristocrats—a golden lobby dictating its proceedings. Our own legislature is little better. The rich rule them by bribes. The rich rule the country by fraud and

cunning; and we say that fraud and cunning shall not rule us." They said that when the workingmen decided that the Chinese must go, and when their will was thwarted by bribery, corruption and fraud, it was time for them to meet bribery, corruption and fraud with force. If this was treason, let those who thought so make the most of it. An anonymous correspondent, under the name of "Citizen," had pronounced these expressions dangerous to the public peace and had called upon the officers of the law to prosecute for them. But he was only making the old plea of oppressors everywhere. McMahon had said this of the speeches of Gambetta. Every tyrant had said the same. King George spoke thus of the utterances of Patrick Henry. But, they continued, "who is this 'Citizen' who dares not write his name?—this coward, who would have somebody else shoot down his own race to make room for the moon-eyed Mongolian? Let him know that the Workingmen know their rights and know also how to maintain them, and mean to do it. The reign of bloated knaves is over. The people are about to take their own affairs into their own hands; and they will not be stopped either by 'Citizen,' vigilantes, state militia or United States troops." Such language being used, and being allowed to be printed and published in the newspapers, the natural result was that the Workingmen's party imagined they ruled the city and that the authorities were afraid of them. They at length determined to make a move against capital and, at least, give it a terrible fright.

On October 29, about three thousand of them proceeded in a tumultuous body to the summit of what was known as "Nob Hill," near the corner of California and Mason streets in San Francisco, where the railroad magnates, Stanford, Hopkins and Crocker, who had moved down from Sacramento some four or five years previously, had erected splendid residences. Crocker's place especially attracted attention from the fact that, wishing to occupy an entire block between California and Sacramento streets for his grounds, he had purchased all but a single small lot with a house on it, belonging to an individual named Yung, about the middle of the Sacramento street front. This he had attempted to purchase; but, at every offer he made, Yung is said to have raised the price, until, being thoroughly disgusted with such

conduct, Crocker determined not to buy at all; and, instead of doing so, he built an immense fence on his own ground all around Yung's house, high enough not only to shut it out of sight from any part of his grounds but also to exclude Yung from the sunshine so necessary to health and comfort in San Francisco. This fence seemed a popular object of complaint; and, after the crowds arrived in the vicinity, Kearney addressed them in very inflammatory appeals about it, its builder and the railroad magnates as a body. He said, according to the report of his words upon which he was afterwards prosecuted, that they were thieves and would soon feel the power of the Workingmen; that, when he had thoroughly organized his party, they would march through the city and compel the thieves to give up their plunder; that he would lead them to the city hall, clear out the police force, hang the prosecuting attorney, burn every book that had a particle of law in it, and then enact new laws for the Workingmen; that he would give the Central Pacific just three months to discharge their Chinamen and, if it were not done, Stanford and his crowd would have to take the consequences; that he would give Crocker until November 29 to take down the fence around Yung's house and, if Crocker did not do it, he would lead the Workingmen up and tear it down, and give Crocker the worst beating with the sticks that a man ever got. On another occasion about the same period in Irish-American Hall, according to the same report, he said he wanted to make a motion that men, who claimed to be leaders in the Workingmen's movement and flagged in their interest, should be hung up to a lamp-post. "By the Eternal," he exclaimed, "we will take them by the throat and choke them until their life's blood ceases to beat and then run them into the sea. A fine young man asked me, 'What position are you going to give me?' His name is Lynch. I said, 'I will make you chief judge.' His name is Lynch, recollect—Judge Lynch; and that is the judge the Workingmen will want in California, if the condition of things is not ameliorated. I advise every one within the sound of my voice, if he is able, to own a musket and a hundred rounds of ammunition."

This sort of Jack Cade talk, which was attracting the rabble in great numbers and urging them on to violence, at length aroused

the hesitating authorities. Two complaints for misdemeanor were made against Kearney—one for uttering the language tending to incite the mob on Nob Hill, and the other for the language at Irish-American Hall. On November 3, while speaking at an open-air meeting near the corner of Kearny and Washington streets and in the vicinity of the lawless district commonly known as the "Barbary Coast," he was arrested and rushed into the city prison. As was to have been expected, there was great excitement. For a time, it was apprehended that an attempt to rescue him by force would be made; and the military were called out and kept under arms. In the excitement the Chinese residents became more than ordinarily alarmed; and the presidents of their Six Companies addressed a petition to the mayor, appealing for protection in all their peaceful, constitutional and treaty rights against the unlawful violence and riotous proceedings, with which they were threatened. But notwithstanding the anticipated trouble, none occurred; and within the next few days a number of other sand-lots speakers,—would-be-imitators of Kearney but without his force—including Day, Knight, Charles C. O'Donnell and Charles E. Pickett, were likewise arrested on charges of inciting riot and sent to jail. These arrests, which ought to have been made before, were probably the best thing that could be done: they put an end for the time to the incendiary harangues and showed that at bottom the sand-lots leaders—however dangerous they might be by inciting the criminal classes to riot—had no personal courage; that their direful threats were but bad breath; themselves blusterers, and their movement, at least as they carried it on apart from the true interests of real labor and genuine workingmen, unsupported by any decent or respectable portion of the community intelligent enough to understand it.

Within a day or two after their arrest, the agitators, with a weakness which could hardly be expected of them, began to "squeal" as it was called in city-prison parlance. They wrote a letter to Andrew J. Bryant, the then mayor—or at least Day did and it was also signed and approved by Kearney and several of the others—stating that they had been misrepresented by the press; that they had no design against the peace of the city either present or future; that they were "willing to submit to any

wise measure to allay existing excitement;" that they did not propose to hold any more out-door meetings or to tolerate any further use of incendiary language; that they sincerely hoped their friends would, under the circumstances, obey the officers of the law and uphold the quiet of the city, and that the mayor was authorized to make such public use of their letter as he might deem conducive to public safety. They evidently expected that the mayor would interfere in their behalf, and perhaps procure a dismissal of the charges against them; but, by that time, there was so much complaint throughout the state at the mayor's conduct that he declined to have anything to do with the matter, and said it was entirely outside of his department. As it turned out, however, they might as well have waited a few days longer and avoided the exhibition of their poltroonery. When their cases came up before the city criminal court, it was found that the city ordinance under which they had been charged was invalid, for the reason that it had never been properly published. They therefore had to be discharged. They were soon afterwards re-arrested and charged with riot under the penal code. But when they again came up for trial, Robert J. Ferrall, the judge of the court, held that the facts, though they might indicate grave offenses, did not show a technical riot, and again discharged them.

The discharge, which took place on November 21, was received by the rabble with cheers and hurrahs and became a sort of preliminary to a grand demonstration by the sand-lotters on November 29, Thanksgiving day. They paraded through the streets of San Francisco with banners flying and sand-lots mottoes flaunted. They acted as if they had won a great victory. And it seemed as if they had; for, as they proudly marched along, many thousands of men—some said seven, some ten thousand—joined their lines and swelled their triumph. After the march, a meeting was held on the sand-lots as usual. Speeches were made by Kearney and others, and resolutions adopted. But the speeches and resolutions were not specially objectionable, being confined to recommendations of certain national legislation in reference to public lands, railroads, national banks and currency. It did not take long, however, for Kearney, notwithstanding his

solemn assurances to the mayor, or perhaps because as they were ineffective to get him out of jail he did not regard them as binding, to again commence agitation. He had found that he had made a noise in the world, and that, even during his imprisonment, the sand-lotters had gone on increasing. His success, in spite of the cowardice he had shown, made him think he could inflame the whole state as he had inflamed the idlers, vagabonds and criminals of San Francisco; and he determined to canvass the various counties; organize clubs and spread his anarchical doctrines—fondly hoping to become a sort of political dictator and rule things as he pleased. He accordingly set out, with Knight, to “stump” the interior and made speeches in various places. In the cities and principal towns, he always had a number of idle auditors; but among the farmers and genuine working men he was not well received; and, before very long, he returned with little to boast of in the way of gaining country followers. In San Francisco things were different. As usual in the winter time, most of the unemployed and vagrants congregated there from all directions; and they all naturally gravitated to the sand-lots, some for mischief and all for excitement. On January 3, 1878, Kearney headed a procession, which started with about four hundred but gradually increased to some fifteen hundred, and marched to the city hall for the purpose of demanding of the mayor either “work, bread or a place in the county jail.” Kearney, as their leader, stated that he could not keep them in check any longer and would not be responsible for what might happen if they were not provided for. The mayor addressed the crowd and said that the city authorities had no power to provide them with work and, if they did, there was no money in the treasury to pay them. The crowd then crossed over to the sand-lots, where incendiary speeches were made as before—only still more threatening. Again there was a tirade against “thieving millionaires and scoundrelly officials;” again talk of lynching the railroad magnates and destroying their property; again the Pacific mail steamship docks and steamers were to be blown up and burned; and, as if all this were not dire enough, there were even suggestions of dropping dynamite from balloons into the Chinese quarters and using infernal machines to clean out “bloated bond-

holders." So violent in fact was the declamation, that some of the officers in the city hall, becoming apprehensive of an attack by the rabble, locked up their safes, closed their offices and took measures to bar out the mob.

Kearney was evidently trying his old tactics of terrorism; and he was again helped by most of his old accomplices and a few new ones, the principal of whom was William Wellock, a shoemaker by trade but an evangelist and "hallelujah-shouter" by profession. Kearney about this time, hearing that both the legislature and the grand jury were likely to interfere in his game, exclaimed, "If the members of the legislature overstep the limits of decency, then I say 'Hemp! Hemp! Hemp! This is the battle-cry of freedom!'" As to the grand jury, he defied them; and said that, if imprisoned again, he would work out of jail and "annihilate every one of these hell-hounds in the state of California." On the other hand, Wellock, or Parson Wellock as he was usually called on account of his profession and fondness for citing passages from the Bible, in an exhortation against monopolists, who were favorite objects of his pious assaults, declared that they were perverters of truth and exclaimed, "What are we to do with these people that are starving our poor and degrading our wives, daughters and sisters? And the Lord said unto Moses, 'Take all the heads of the people and hang them before the Lord.'" These and such harangues, thus continued and reiterated and growing more and more threatening, and particularly the supposed more than ordinarily dangerous demonstrations on the sand-lots, caused renewed public alarm; and again leading citizens organized a committee of safety, and made arrangements to be ready with arms to fight the mob at any moment, if required. But fortunately it was not necessary. On January 5, the grand jury presented indictments against Kearney, Wellock, Knight, O'Donnell, Pickett and a few others for conspiracy and riot. All were promptly arrested; and, within a few days afterwards, several other charges were made against Kearney for the use of incendiary language. As on the former occasion, the arrest of the ringleaders had a salutary effect in bringing about quiet, at least for a short time. On January 22, one of the indictments against Kearney and Wellock was tried before a jury

in the city criminal court; but, as might have been expected under the rulings of the judge on the subject of riot before mentioned, they were acquitted; and the remaining charges were not pressed.

Not only did the grand jury of San Francisco thus do its duty towards securing the public peace; but the legislature also contributed its part to the same purpose. On January 17—just after a meeting on the sand-lots at which the city authorities were defied with even more than usual verbosity, more burning and blowing up was threatened and, as a significant indication of what was intended, a hangman's noose was suspended on one side of the speaker's stand—an effective act was introduced into the senate; on the same day unanimously passed by that body and sent without engrossment to the assembly; the next day amended and passed in the assembly by forty ayes to sixteen noes, and sent back to the senate which at once concurred. On January 19 it was approved by the governor.¹ It was a drastic measure, evoked by the occasion and commonly called, especially by the sand-lotters, the "Gag-law." It was in fact an amendment to the penal code, passed at the solicitation of the board of supervisors of San Francisco. It provided that "any person who in the presence or hearing of twenty-five or more persons shall utter any language, with intent either to incite a riot at the present or in the future or any act or acts of criminal violence against person or property, or who shall suggest or advise or encourage any act or acts of criminal violence against any person or persons or property, or shall advise or encourage forcible resistance to any of the laws of this state, shall be deemed guilty of a felony" and be punished by imprisonment not exceeding two years, or fine not exceeding five thousand dollars, or by both.² Directly after the above-mentioned bill, Frank McCoppin introduced into the senate a bill to increase the police force of San Francisco, which was subsequently, though not with so much rapidity, passed and approved.³ An act was also passed by the same legislature appropriating upwards of five thousand dollars to pay for

¹ Senate Journal, 1877-8, 122, 134, 166; Assembly Journal, 1877-8, 231.

² Amendments to Codes, 1877-8, 117, 118.

³ Senate Journal, 1877-8, 122; Stats. 1877-8, 879.

military duty performed by the National Guard during the troubles in San Francisco, and another act appropriating twenty thousand dollars to be expended in the discretion of the governor for the conservation of the public peace.¹ All this legislation, but particularly the new riot act and the new police act, were bitter pills to Kearney and his accomplices, and for a time made them very uncomfortable.

But in the meanwhile the sand-lots movement had begun to assume the phase of a new political party; and almost from the start, and for several subsequent years, it played an important part in the history of the state. On January 6, 1878, Nathan Porter, one of the state senators from Alameda county, died; and on January 22, at a special election held to fill the vacancy, John W. Bones, who had been nominated by the new Workingmen's party, was chosen by a large majority over William W. Crane, Republican, and Joseph B. Lamar, Democrat. Both the last-named candidates were able and popular men, well fitted for the position; while Bones had neither the necessary education, experience or training and was so eccentric, besides being somewhat tall and lean, that he was generally called "Barebones" and sometimes "Praise-God Barebones." The next election—which was also a special one to fill vacancies in the office of state senator and assemblyman—took place on February 19 in Santa Clara county and resulted in the choice of a so-called People's party senator and a Workingmen's assemblyman. In March, 1878, at the regular city elections in Sacramento and Oakland, the Workingmen's party succeeded in electing their candidates for mayor and several other offices. These results were a surprise to the community and especially to the politicians. It had become evident that there was a new party in the field, which could not be ignored; and it at once became a problem with the other parties how to capture the new factor or counterbalance its force.²

The new or Workingmen's party, thus started, held its first state convention in San Francisco, commencing January 21, 1878. It purported to be a party of labor and to embrace within its ranks everybody engaged in productive industry and the dis-

¹ Stats. 1877-8, 696, 879.

² Davis' Political Conventions, 374-376.

tribution of its fruits. Each member was required, upon signing the roll, to publicly and solemnly pledge himself to sever all connection with the Republican and Democratic parties; to abide by the decision of the majority in all cases duly expressed, and to at all times aid in the selection of the most competent persons in the party for official position. Resolutions were adopted, prescribing an oath by which every member had to bind himself to oppose by all lawful means the introduction and maintenance of coolie laborers in the United States and not to employ or sell to or buy from them. Land was to be held for actual settlement and cultivation; individuals holding more than one square mile were to be restricted to the use of that amount only for cultivation and pasturage; all lands of equal value and productive nature to be subject to equal taxation; all import duties on raw materials not produced in the United States to be abolished; a system of finance to be adopted "consistent with the agricultural, manufacturing and mercantile industries and requirements of the country, uncontrolled by rings, brokers and bankers;" the pardoning power conferred on the president of the United States and the governors of the several states to be taken away and vested in commissions; malfeasance in public office to be punished by imprisonment in the state prison for life and not to be pardoned; the contract system in the state prisons and reformatory institutions to be abrogated, and goods manufactured there not to be sold at less than current market rates for the product of free labor; all labor on public works to be performed by the day at current rates of wages; eight hours to be a sufficient day's work and to be made so by law; all public officers to receive a fixed salary and account for fees as public moneys; the president, vice-president and senators of the United States to be elected by direct vote of the people; the common school system to be forever cherished and supported; a system of compulsory education to be provided; a special fund maintained to secure the attendance of such poor children as would otherwise be unable to attend; such education to be entirely secular, and in all public schools lectures instituted at stated intervals, whose primary aim should be to uphold the dignity of labor and mechanical vocations as paramount to all other walks of life.¹

¹ Davis' Political Conventions, 377-381.

In view of the approaching election for delegates to the constitutional convention, which was to take place on June 19, 1878—and in view also of the fact that the new party claimed all the political purity in the country, reviled the old parties and loudly proclaimed that it would have nothing to do with them or either of them—the Republican and Democratic state committees on April 24 met at the Palace Hotel, though in different rooms, with the object of effecting a fusion and nominating a joint ticket of non-partisan delegates. The Republicans adopted resolutions to carry out this purpose, and invited the Democrats to co-operate; but the Democrats, having no quorum at the time, postponed action. Subsequently the Democratic committee—apparently with a desire of ignoring the Republicans—adopted resolutions, not mentioning them or their action but recommending that in the approaching elections all past party issues should be discarded; that, for the purpose of selecting candidates, a nominating convention should be held at Sacramento on May 22 to nominate eight delegates from each of the four congressional districts to be voted for by the people of the state at large, and that the people of the several counties and senatorial districts should select their best men as local candidates. As soon as these resolutions were announced, the Republicans—considering themselves ill treated—adopted a new set of resolutions, setting forth the facts and recommending that the Republicans throughout the state should unite with their fellow-citizens in the selection of the ablest, fittest and best-known gentlemen as delegates and that meetings should be held in the different counties, senatorial and congressional districts for the purpose of nominating them. On May 4, in response rather to the latter than to the former resolutions, and in accordance with a plan which had been adopted by and proved eminently successful with the old People's party, an extensive petition was published in the San Francisco newspapers, requesting certain prominent citizens of San Francisco to nominate delegates for the first congressional district, then consisting of the city and county of San Francisco—to be voted for by the people of the state at large—and for the city and county of San Francisco, to be voted for by the people of the municipality. On May 10, accordingly, the persons so

named nominated a non-partisan ticket. And this plan was also adopted in each of the other congressional districts, and in many of the senatorial districts and counties.¹

A misunderstanding, or quarrel rather, had meanwhile occurred in the Workingmen's state committee, which resulted on May 2 in the expulsion of Kearney from that organization, and on May 6 in his removal from the position of president of the party, on the charge of being corrupt and using the organization to advance his own selfish ends. Soon afterwards the presidents of the various ward clubs in San Francisco, which continued favorable to Kearney, resolved to stand by him; and the result was that there were two separate state nominating conventions of Workingmen called to meet in different halls in San Francisco on May 16. One of them, the so-called Kearney convention, met at Charter Oak Hall; the other, or anti-Kearney convention, at Tittel's Hall. The country delegates to the convention were for a time at a great loss to know which faction to join. Those from Alameda, Marin, Monterey, San Joaquin, Santa Clara, Santa Cruz and Sonoma counties, after a long deliberation and hearing speeches by John P. Dunn, William F. White, D. J. Oullahan, Joseph H. Budd and others, adopted a resolution to recognize Kearney as an organizer worthy to rank among the great organizers of history and worthy of the confidence and support of the people. Afterwards at a meeting of the country delegates present, consisting in all of thirty-seven, twenty joined the Kearney convention, of which Kearney was president; nine the anti-Kearney convention, of which Frank Roney was president; and eight decided to join neither of them. The Kearney convention nominated candidates for all the congressional districts; the Roney convention, which had but a slim attendance, only for the first district; while the old-line Republicans and Democrats, who refused to unite on the non-partisan tickets, each nominated a ticket for their own party.²

The election took place, as prescribed by statute, on June 19, 1878, and resulted in the choice of seventy-eight non-partisans, including all the thirty-two delegates at large; fifty-one Working-

¹ Davis' Political Conventions, 381-383.

² Davis' Political Conventions, 383-390.

men, including thirty-one delegates from San Francisco; eleven Republicans; ten Democrats, and two Independents. Of the whole number, seventy-five had previously been Republicans, seventy Democrats and seven Independents; fifty-eight were lawyers, thirty-nine farmers, seventeen mechanics, nine merchants, five physicians, five miners, three journalists, and the rest of various occupations, including a school-teacher, a music-teacher, a telegraph-operator, a restaurant-keeper and a cook. Among them were some very able men; and a few were comparatively ignorant and stupid. Of those from the country, a number had some years before been more or less closely connected with the so-called Granger movement and still adhered to some of its radical views. On account of this fact, it became possible for a sort of combination to be formed, in reference to a number of important questions, between the Workingmen or sand-lotters and enough of the old Grangers to make up a majority; and the consequence was a quantity of novel and some very crude work.¹

¹Davis' Political Conventions, 390-392; Sacramento Record-Union, September 30, 1878.

CHAPTER XI.

SECOND CONSTITUTIONAL CONVENTION.

THE second constitutional convention met in the assembly chamber at Sacramento on Saturday, September 28, 1878.

One hundred and forty-five delegates were present; four were absent; two, Henry H. Haight and George M. Hardwick, had died since election, and Thomas Morris had resigned. The body was called to order by Governor Irwin as temporary president—Thomas Beck, secretary of state, acting as temporary secretary. The members were then sworn in by the governor, after which the convention adjourned to Monday, September 30.¹ It was remarked, immediately after the convention got together, that its very first movements indicated in some degree at least its character. Its communistic wing, called Workingmen, naturally took on the form of a Jacobin club, whose members were sworn to profound secrecy, and was by far the most compact and easily wielded element in the convention. They were more strongly under the influence of cohesive tendencies—due to party pressure—than any delegation that had ever appeared in a legislative assembly in the state; and the party behind it was less tolerant of independent thought and action than any before existing. There might be said to be two classes in this wing of the convention—one whose communistic affiliations arose out of positive opinions as to the best forms of government, and the other that was by natural instinct restive under the restraints imposed by any idea of government and allied itself with the party that for the time was the most distinctly the exponent of destructiveness and discontent. On the other hand, the conservative wing of the convention com-

¹ Debates and Proceedings of the Constitutional Convention, by E. P. Willis and P. K. Stockton, Sacramento, 1880, 1-15.

prised a very strong body of men of ripe maturity of judgment, scholarly attainment and special knowledge in social and governmental science. In intellectual force, oratorical ability and broad comprehension of the practical possibilities of government, it was an assemblage of the highest order. Its members in general were men, who held to the American idea that the attainment of justice was the foundation of government; that the great problem was how to combine the greatest good of the whole with the least practical restriction upon individual liberty, and that the end of government was to protect men in their natural rights without restraint upon natural capacities. Opposed to them, were those who favored what was known as parental government, which prescribed not only how men should act but what they should think, which would tolerate no differences of opinion, which was always mandatory and constantly interfering. The different classes soon took form and developed.¹

On the evening of September 28, a conference was held by the Non-partisan, Republican and Democratic members for the purpose of agreeing upon action in reference to the permanent organization of the convention. The Workingmen had already gone off in secret caucus by themselves. The members, who met in conference, amounting to eighty-three in number, took an informal vote for permanent president and secretary of the convention, which showed that the majority were for Joseph P. Hoge for president and Marcus D. Boruck for secretary. Upon Monday morning, at the meeting of the convention, after some windy speeches of sand-lots orators, Hoge was elected president on the fifth ballot by seventy-four votes out of one hundred and forty-seven; but Boruck was beaten the next day for secretary by J. A. Johnson, who afterwards resigned and was succeeded by Edward F. Smith. In the choice for subordinate offices, the Workingmen were entirely defeated; and this fact apparently caused them a few days subsequently, when nominations were in order to fill vacancies in the convention, to attempt to throw ridicule on the proceedings by naming such persons as Henry Ward Beecher, Theodore Tilton, Dr. Mary Walker and so on.

¹Sacramento Record-Union, September 30, 1878.

On October 8, rules were adopted; and the next day propositions for constitutional provisions began to be received.¹

These propositions, of which the Workingmen presented the first lot, and of which nearly every Workingman had at least one, embraced all kinds of subjects. One of them, for instance, proposed that aliens should not be allowed to hold property; another, that Chinamen should not be allowed to trade, peddle or carry on any mercantile business; another that there should be only one legislative body and that the office of lieutenant-governor should be abolished. Others offered a proposition for a "perfect" eight-hour law and a "perfect" lien law for mechanics and laborers; a proposition to prevent any person not eligible to citizenship from settling in the state, and to fine any person for making a lease to or encouraging such person to remain; a proposition against subsidies to corporations; a declaration that "land-grabbing must be stopped;" a proposition against the employment of aliens ineligible to become citizens on any public work; against poll taxes; to limit the acquisition of land by any one person, association or corporation; requiring an oath, when demanded by anybody, as a qualification to voting at any election or maintaining or defending any suit in the courts, of not having after ninety days from the adoption of the new constitution employed in any manner any Chinaman, Mongolian or other alien incapable of becoming a citizen or bought, sold or used anything made, produced or prepared by any such person in the state; prohibiting aliens, who could not become citizens, from bearing arms; prohibiting secret sessions of grand juries; abolishing the pardoning power; making corporations or persons having work done by contract liable for all dues from contractors or sub-contractors to laborers; abolishing grand juries; requiring equal assessments on all lands of equal productive quality; fixing the number of grand jurors at thirteen; a declaration in favor of God and making allegiance to God and the state one; against the eligibility of any candidate to office who should announce or consent to the announcement of his name as a candidate in a newspaper; against Chinese testimony; prohibiting Chinese from fishing in the inland waters of the state;

¹ Debates and Proceedings of Convention, 15-76.

imposing a per capita tax of two hundred and fifty dollars on each coolie immigrant; a provision that, if a sentence of hanging were not executed on the day set, it should be commuted and no other penalty inflicted, on the ground that the law did not contemplate torture as well as death; and a proposition to abolish the militia as "all fuss and feathers" and entirely useless.¹

The opposition to the Chinese, which constituted so principal a part of the Workingmen's political capital, was, however, not confined to the Workingmen alone. Had it been, it is not likely that much would have been accomplished. Their ideas seem to have been limited almost exclusively to the Chinese already in the state under treaty stipulations and to preventing them from doing any business, obtaining any employment, holding property, testifying in courts as to matters in which white men were concerned, or having anything to do with the fisheries of California. They seemed to have a notion that the Chinese were not human beings and had no rights which anybody was bound or ought to respect. One of their loudest and most irrepressible leaders gave expression to a very common sentiment among them by moving that the first clause in the bill of rights, that "all men are by nature free and independent," should be so amended as to read that "all men, who are capable of becoming citizens of the United States, are by nature free and independent." But the proposition was so ridiculously absurd that even the sand-lotters themselves could understand, when everybody else commenced laughing at it. There were, however, others who took up the anti-Chinese cry; and some who seemed to understand the subject. One non-partisan moved a clause that "the Chinese must go," and another a clause prohibiting all further immigration of Chinese into the state. Then John F. Miller, apparently following the suggestions of the governor's message and taking the only practical method of reaching his object, moved that a memorial should be forwarded to the president and senate of the United States for a modification of the Burlingame treaty. He said that the state might protect itself against alien vagrants, paupers, criminals, persons having contagious or infectious diseases and aliens otherwise dangerous to the well-being and peace of the

¹Debates and Proceedings of Convention, 80-371.

state, but that any proposition to prevent Chinese immigration in general was a matter of commerce, within the exclusive cognizance of the United States government and not of the state.

Miller subsequently made a long and elaborate speech on the Chinese question. Though, as chairman of the committee on the subject, he had reported the various anti-Chinese sections, he said the committee was not agreed and that he for one did not concur in all of them. The committee was unanimous that Chinese immigration was an evil; and that, if possible, the further influx of Chinese should be stopped; but there was a great difference of opinion as to the measures to be employed to remedy the evil. As for himself, he was satisfied that it was not within the power of the state to establish any regulations which would prohibit Chinese immigration, and that the state could not by legislation deprive either the Chinese of their rights under the treaty or any citizens of their right to employ them. He thought that the criminals amongst them might be sent away cheaper than they could be kept in Californian prisons; but, instead of sending all back to China, he suggested, if the people of the eastern states persisted in maintaining that the Chinese were as good as any other class of immigrants, to send them a brigade or two of the criminal and diseased classes and see how they would like them. On the other hand, he was of opinion that it was perfectly competent and proper to prohibit the employment of any Chinaman on state, county, municipal or other public work, and that it was desirable to do everything the state could lawfully and constitutionally do to rid itself of the great mischief. And he went into a long argument to prove that the traditions and uniform practices of the United States from colonial times down through the whole life of the republic did not properly apply to a non-assimilable people like the Chinese. He said that the sentimental class of political economists claimed that the Chinese would by their cheap energy promote the growth of industry and stimulate wealth, and that their exclusion would be an economic mistake. But he answered that, though the Chinese might work well and be quiet, peaceable and industrious, and though cheap labor might be in an economic sense and under certain conditions an advantage, their cheap labor would not be so to California.

Immigration had been a blessing to the United States, not because it cheapened labor, but because it brought to the country, in aid of the great work of development, men who established homes, whose accumulations swelled the aggregate of wealth, who had become a part of the nation and contributed to Anglo-Saxon civilization. But the Chinaman was altogether different. He was the result of a training in the art of low life. For thousands of years, China had been filled to the verge with a redundant population, and the life of the average Chinaman had been a mere struggle for animal existence. He bore with him the heredity of ten thousand years of pinching poverty, of incessant toil, of selfish warfare for food. His physical organs had become adapted to such a life. The needs of his body had long since been reduced to a minimum. His physical system had become so accustomed to parsimony of diet that it had grown into an adaptation to insufficient food. There had been a process of selection going on in China under which the heavy feeders had fallen out and, under the law of the survival of the fittest, none but those who could practice the most rigid self-denial as to food remained. They had also been trained by centuries of incessant toil to procure the maximum of subsistence from the soil. The outcome of this kind of existence was a shriveled human creature, whose muscles were like iron, his sinews like thongs, his nerves like steel wires, his stomach lined with brass—a creature who could toil sixteen hours of the twenty-four and live and grow fat on the refuse of any American laborer's table; a creature without sympathy and supremely selfish, because his struggle for existence had kept him busy with himself; capable, as a late writer had said, of driving the vulture from its prey, which he would consume and then devour the unclean bird itself; a machine against which the white man could not compete in the field of labor.¹

In these and similar reasonings to the same general purport by Miller and others, the majority of the convention seemed to agree. But the Workingmen were loud for more drastic measures by the state; and, if not by the state, then by the people. At this last intimation, Volney E. Howard, a Democrat born in the north but indoctrinated in the south—a thorough believer in the

¹ Debates and Proceedings of Convention, 628-633.

right and power of the state, who had very early expressed himself in favor of "shutting the Golden Gate against Chinese lepers" but as a lawyer of ability and a man of intelligence and experience could not go the length of the sand-lots orators—rose to deprecate any except legal and constitutional action. He said that violence had been suggested and mobs alluded to. But as to anything but regular governmental action, he set his face against it. If the government was not sufficient to correct all the evils of society, then the government was a failure and a fraud. He had no taste for mobs; whether they were in the nature of an honest uprising for the correction of abuses, or whether they were that "lowest and vilest and most criminal of all mobs under the name of a vigilance committee." If any violence were resorted to in relation to the Chinese question, it should—and, if there were an executive of honor and courage, it would—be put down in sharp and vigorous action, cost what it might in blood and treasure. A mob meant the torch; a mob meant the destruction of property. It never could succeed. There were too many property owners, too many men with little farms, little homes. They would revolt against mobs; and whenever violence was threatened, he was for stifling it at once. In relation to the mobs of 1877 against eastern railroads, though they may have been provoked by the reduction of wages at a time when the railroad companies were declaring dividends of seven per cent, they were properly suppressed by the state and federal governments; "and," he continued, "if President Hayes never does another act which will commend him to the grateful remembrance of posterity, the suppression of those riots will. No, sir; give us law and the regular methods of redress of grievances through the ballot-box—and I trust we will redress a great many in that way." And he concluded with declaring that he would never vote to withhold the protection of the law from any human being. He would never vote for any measure that would involve the committing of acts of barbarism. He would never vote for anything that would disgrace the fair name of California among civilized men.¹

But the most remarkable speech on the Chinese question, and perhaps on any question before the convention, was made by

¹ Debates and Proceedings of Convention, 664-667.

Charles V. Stuart, a farmer of Sonoma county. He had been in California for thirty years, he said, and had made his living and raised and educated a large family by cultivation of the soil. He had employed hundreds and hundreds of men. He had never been in the political arena; politics was distasteful to him, and he knew little of political movements and nothing of the management and plans used for self-preferment. He had not up to that time, some two months since the organization of the convention, taken the floor or had anything to say. But he had been a patient listener to what others had said; and he could keep silence no longer. Though unprepared and unaccustomed to public speaking, and uncertain whether he could get through with what he wanted to say, he would attempt to express his views in a few remarks. He was opposed to engrafting any one of the anti-Chinese sections into the constitution. They would make it a hotch-potch that would be a disgrace to the state and a laughing-stock to the world. They were clearly in disregard of the constitution and laws of the United States and entirely beyond the jurisdiction of the state of California. If he were asked whether he had not himself employed hundreds of Chinamen, he would answer, "Yes, thousands of them, and thousands of white men too." There was not a cultivator of the soil in California but employed Chinamen directly or indirectly. Chinamen had become the cooks and servants, the hewers of wood and drawers of water of the country. They did the work, and did it well—very differently from the thousands and tens of thousands of so-called workingmen with white faces, who traveled around from place to place, pretending to seek work but who never had worked, do not work and never would work.

If he remembered rightly, the Chinese had been invited to the state. In 1850, unless he was much mistaken, at the celebration in San Francisco of the admission of California into the Union, the Chinese were given the post of honor. In the parade of that day, they were welcome guests and placed directly after the state and city officials in the long line. And from that time down to the war of the rebellion, the national government and the state government combined by every means in their power to induce the Chinaman to come, and to capture the trade with

them. Treaties with those objects in view had been made—first by Porter, backed by a naval armament flaunting the stars and stripes, and last by Burlingame, whose successful negotiations to accomplish the same ends had been received with plaudits and hurrahs all over the country. Burlingame's treaty invited the Chinese to all the rights and privileges of the most favored nations; it admitted Chinese immigrants as freely as those of any other nationality, and it was in full force and vigor as a part of the supreme law of the land, against which none but the federal government could dare to interfere. Under it, steamship lines had been subsidized to run regularly between the Pacific coast and China; a large trade had been established, and Chinamen had come over and labored for us for twenty years. It was their labor that had made California what it was. It was these men, thus invited to California, that had mainly built the railroads, cleared the farms, reclaimed a million acres of swamp and overflowed land, planted the orchards and vineyards, reaped the crops and gathered the fruits, dug and sacked the potatoes, manufactured the woolen and other goods, cleaned up the tailings of the hydraulic mines, scraped the bed-rock of the exhausted placers, built the cities and relieved most of the householders of the drudgery which would otherwise have been imposed upon wives and daughters—thus contributing to the happiness and true prosperity of the people, and adding many millions annually to the state and nation's wealth. Nearly everything of value had been done by them; and they were the only men who could be procured for servants—that is, for servants that would do what they were wanted to. He was willing to admit that good white laborers were very good. He believed that one good white man was worth two Chinamen; but one Chinaman was worth two negroes, and one negro was worth two tramps—that is, for labor.

Stuart further maintained that there could be no fear that the Chinese would ever get the upper hand in the United States or California. It was a well settled principle in all governmental philosophy that the weak fall under the strong. The black man had faded away, and the Chinaman taken his place as a laborer. He was, however, only for a day and would be gone. The idea of the Chinaman or the Chinese empire overthrowing the Anglo-

Saxon race was preposterous. A hundred thousand annually scattered throughout the United States would not affect it in a hundred years. If there was anything to fear for the country, it was from a different class, and not the Chinese. It was from the rioters and hoodlums; those that were plotting the overthrow of the common schools; those that were conspiring to destroy the government and to stamp out liberty, so that despotism over conscience, mind and muscle might rise upon the ruins; those that sought to despoil the wealthy men, and threatened the lives of the best citizens. As for himself, though also threatened, he had no fear of the sand-lots mob. He had no sacrifice, either human or divine, either moral or political, to throw before this Juggernaut or to appease the anger of this Moloch; and he was sorry to see so many of the convention standing indifferently by, while others were trying to destroy the prosperity of the state and nation—totally destroying the great producing and manufacturing interests of the state by silently encouraging this insane crusade against Chinese labor. Could they not conceive the enormity of this loss to the state? Could they not see that the driving away of this army of labor would bankrupt and overwhelm all the manufacturers and most of the producers? “Deprive us of them,” he continued, “and we will have no more ships to load from our bays, no more fruit to adorn our tables, no more wool or woollen goods to warm our bodies, no more wine to cheer our lives or sustain our bodily infirmities. All will return again to its primitive condition—a state worse than that of France after the revocation of the edict of Nantes or of Spain after the expulsion of the Moors. All, I say, will again be swallowed up in this maelstrom of blind rage and fury.” In the same style and with quite as much courage and force, he went on at great length; and, in conclusion, he demanded that the Chinese should be accorded the privilege of educating their children in the common schools, in return for the school taxes they paid; that the persecutions against them by personal assaults, to which the law was blind, should cease; that the disgraceful, heartless and inhuman special legislation against them should stop, and that the state, instead of longer allowing them to be outraged, should protect them in the rights of “life, liberty and

the pursuit of happiness," guaranteed to all men under the American flag. But, notwithstanding his protests, most of the anti-Chinese sections were almost unanimously adopted, and many of the injustices to the Chinese given a sort of constitutional approval.¹

In another direction, a very vigorous effort, also unsuccessful, was made in favor of woman-suffrage. The chief advocate for this was Thomas B. McFarland; but he was supported by James J. Ayers, Eli T. Blackmer, William P. Grace, Horace C. Rolfe, George W. Schell, George Steele, W. J. Sweasey, Alphonse P. Vacquerel and others. After the main proposition was defeated, an attempt to authorize the legislature to permit woman-suffrage was lost by a vote of fifty-five in favor to sixty-seven against it. Among other propositions defeated, were such as to abolish grand juries; to make suffrage compulsory; abolishing official bonds except by officers having charge of public funds; requiring an oath from legislators that they would not be bribed and making a violation of the oath perjury; providing a decreasing scale for pay of legislators as sessions were prolonged; prohibiting divorces except for adultery; providing for the appointment of all judicial officers, except justices of the peace, and to fix their terms of office during good behavior; prohibiting the employment of chaplains in state institutions; submitting every statute of the legislature to popular vote; striking out of the clause in relation to criminal libels that the jury should have the right to determine the law; providing that in trials for criminal libels the judge might declare the law but the jury should not be bound by the instructions of the court; fixing the amount for which property was insured as its value in adjusting losses; providing that justices of the peace should receive salaries; preventing the mortgaging of homesteads except for purchase money or improvements thereon; restricting land-holding to six hundred and forty acres; numbering election ballots and checking votes opposite names on the registers, and moving the capital of the state to San José. Among petitions from the outside, and it would almost appear from some former generation, was one "that the existence of God the Father and the Son and responsibility

¹ Debates and Proceedings of Convention, 642, 1238-1240.

of the state to Him be recognized and declared in the preamble" and another making Sunday a day of rest by constitutional provision.¹

Another subject, which attracted much attention and in which radical changes were made over the system provided by the old constitution, was that of taxation. One of the first propositions offered was that no person should pay taxes on his indebtedness; another was to make the payment of poll taxes a qualification for suffrage; another to exempt church property from taxation; a fourth that no license should be collected from any person carrying on business; a fifth to exempt from sale for taxes all property exempt from sale on execution. One delegate believed in a graduated scale of taxation, in proportion to their amount, on estates of deceased persons, so that small ones would pay no tax but large ones should pay enough to run the government. Another was in favor of an ad-valorem tax upon all property. Still another insisted upon an income tax. But the main contention was to tax mortgages and solvent debts. As one of the Workingmen's orators said, it was determined to stop the mouth of the supreme court, which had decided that mortgages and solvent debts were not property, subject to taxation.² This was to be accomplished by a clause, proposed by William W. Moreland of Sonoma county and known as the "Moreland amendment," by which "bonds, notes, mortgages, evidences of indebtedness, solvent debts, franchises and everything of value, capable of transfer or ownership," should be considered property and taxed in proportion to its value, to be ascertained as provided by law. Another Sonoma delegate declared that there was nothing which the people of his county were more in favor of than the taxation of mortgages and solvent debts—and he might have added that it was probably because nearly everything in that county was at that time under mortgage, and because the cry against money loaners and capitalists was for similar reasons very general in many parts of the state.

Samuel M. Wilson of San Francisco may be said to have led

¹ Debates and Proceedings of Convention, 81, 83, 104, 1004-1013, 1363-1365.

² *People vs. Hibernia Savings and Loan Society*, 51 Cal. 243.

the opposition to the proposition of taxing mortgages. He argued that when real and personal property were taxed, everything that really existed was taxed. Taxation should be confined to property that was tangible and visible to the senses. Debts, whether secured by mortgage or not, were simply a creature of the mind and existed purely in imagination. Such also were choses in action, patent rights, copyrights, good-will, pensions, policies of insurance, contracts of sale and so on, which could not be taxed. He was therefore opposed to the proposed taxation of mortgages. He appealed to the farmers and mortgagors in general not to tax mortgages, as it would simply add to their burdens. Money lenders would take care of themselves and in the end the borrowers would have to pay the tax. He then went on to show that the proposed tax upon mortgages and solvent debts would be double taxation, and would set back the development of the state ten years.¹ Several others followed on the same side; and, among them, several of the Workingmen, who saw that the state was entitled to a tax upon tangible property alone, and not to a tax upon a mere representative of property which was itself taxed. But most of the Workingmen and the so-called Grangers—for they had combined on the question—were in favor, to the full extent of the Moreland amendment, of taxing the land and the mortgage separately—the land for its value and the mortgage for its face. When it came to the vote, however, the Moreland amendment was lost by a vote of sixty-eight against, to forty-seven for it. But some of the same purposes, contemplated by the Moreland amendment, were afterwards accomplished by the complicated system of taxation adopted, which defined “moneys, credits, bonds, stocks, dues, franchises and all other matters and things, real, personal and mixed, capable of private ownership,” as property subject to taxation; exempting growing crops and property used exclusively for public schools or belonging to the state, county or municipality; providing for a reduction from credits of debts due to bona-fide residents; making mortgages and contracts, by which debts were secured, for the purposes of taxation interests in the property affected thereby, and prescribing that all land, cultivated or

¹ Debates and Proceedings of Convention, 882-885.

uncultivated, of the same quality and similarly situated, should be assessed at the same value. In the same connection, a state board of equalization was created—to be elected at the general state elections—to consist of one member from each congressional district, whose duty it was to be to equalize the valuation of taxable property in the several counties, and also to assess the franchise, roadway, road-bed, rails and rolling stock of all railroads operated in more than one county in the state. An attempt to limit the annual state tax to forty cents on each one hundred dollars of valuation was defeated, as also a proposition to impose a succession tax upon legacies; but provision was made for the payment of taxes on real estate by installments, and for income taxes if prescribed by the legislature.

The next most radical changes in the organic law, perhaps, were in relation to corporations. And in respect to these, there was again a combination between the Workingmen and Grangers. As to railroad corporations, a railroad commission was created, to consist of three members, each to be elected in a specified district at the regular gubernatorial elections. This commission was to regulate the freights and fares of railroads and transportation companies; prescribe a uniform system of accounts to be kept by them, and have a general supervision over their business. Various regulations were added against combinations between railroad companies and other common carriers, by which the earnings of one doing the carrying was to be shared by any other not doing the carrying; also against discrimination in charges or facilities of transportation; and it was provided that railroad freights and fares, lowered for the purposes of competition, should not be raised again without the consent of governmental authority. A significant indication of what some members thought of the duties of the railroad commission was a proposition, made by one delegate and supported by a number of others though not enough to adopt it, to allow any citizen to run a locomotive and train on any railroad in the state, under such rules, regulations and pay as the commission might prescribe.¹ As to corporations in general, the most radical change was a clause, proposed by David S. Terry, making directors or

¹ Debates and Proceedings of Convention, 166, 174-178, 559-574.

trustees jointly and severally liable to creditors and stockholders for all moneys embezzled or misappropriated by officers during their terms of office. This clause—which one delegate called “as absurd a proposition as had been presented to the convention, and that was saying a good deal,” and another as going “beyond everything in reason or justice and beyond all the well-settled rules of law on the subject,” and another as “a direct blow at the prosperity of the state”—evoked much discussion; but, on account of the combination above referred to, it was adopted by a considerable majority.¹

A radical change of a different character and in another direction consisted of certain limitations upon legislative power. Under the first constitution, the legislative power, within the bounds prescribed by the constitution of the United States, was practically unlimited; and, if legislators of integrity and intelligence could always have been secured, there could not possibly have been any need of change. But experience had shown that legislators could be corrupt and foolish; that they could seek election on account of the money they could improperly make out of their votes, and that they could fritter away their time in local, special and private legislation that was not needed or, if needed, could be better accomplished by general laws. To cure these evils to some extent at least, a section was adopted prohibiting the passage of local or special laws in a large number of specified cases, or in any case where a general law could be made applicable. But there were some exceptions to the principle thus enunciated. One was that consolidated city and county governments of more than one hundred thousand population should have two boards of supervisors or houses of legislation; and another was a provision giving cities containing more than a hundred thousand inhabitants, and evidently like the other intended for San Francisco alone, authority to elect a board of fifteen freeholders and through them frame charters for their municipal government and regulation. Any charter so adopted was to be consistent with and subject to the constitution and laws of the state, and approved by a majority vote of the members elected to each house of the legislature; and, when so

¹ Debates and Proceedings of Convention, 418, 1199-1207.

adopted and approved, should become the organic law of such city, or city and county if consolidated, and supersede any existing charter or amendments thereto and all special laws inconsistent with it. At the same time, while the legislature was inhibited from imposing taxes upon counties, cities, towns or other public or municipal corporations for county or municipal purposes, and from delegating to any special commission or person any power to levy taxes or assessments or perform any municipal functions whatever, power was conferred upon any county, city, town or township to make and enforce within its limits all such local, police, sanitary and other regulations as were not in conflict with general laws.

Under the old constitution, nothing was said about water rights: under the new the use of all water appropriated or to be appropriated for sale, rental or distribution was declared to be a public use and subject to the regulation and control of the state in a manner to be prescribed by law; and rates for water supplied to any city and county, city, town or the inhabitants thereof were required to be annually fixed by the board of supervisors or other governing body of such municipality; and it was further declared that the right to collect such rates was a franchise and could not be exercised except by authority of and in the manner prescribed by law. The old constitution said nothing about state prisons; and under old laws convict labor had been let out by contract: all this was changed by the new constitution, which prohibited any such contracts and required the legislature to provide for the working of convicts for the benefit of the state. The pardoning power under the old constitution, which was almost unlimited, had been so frequently used as to be very often abused. It appeared that many of the convicts, partly at least on account of the facility with which pardons could be secured, were serving their fourth and some their tenth terms. James McM. Shafter affirmed that they regarded San Quentin as "the happy valley of Rasselas and had no fear of it." The new constitution continued the pardoning power in the governor in much the same terms, but inhibited him or the legislature from granting a pardon or commutation of sentence in any case where the convict had been twice convicted of felony, unless upon written

recommendation of a majority of the justices of the supreme court. Under the old constitution criminal offenses amounting to felony, excepting impeachments and certain military and naval offenses, had to be prosecuted on presentment or indictment by a grand jury: under the new, they could be prosecuted by information after examination and commitment by a magistrate, or by indictment; and provision was made for the taking of depositions of witnesses in criminal cases other than those of homicide.

The constitution of 1849, as amended in 1862, provided that the legislature should meet biennially; that its sessions should commence on the first Monday of December of the odd-numbered years and not continue longer than one hundred and twenty days, and that it should consist of senators and members of assembly elected by districts—the senators to hold for four years and the assemblymen for two. The number of assemblymen was not to be less than thirty nor more than eighty, and that of senators not less than one-third nor more than one-half that of assemblymen. The new constitution changed the commencement of the sessions to the first Monday after the first day of January of the years 1880 and 1881 and of every odd-numbered year thereafter; fixed the number of senators at forty and of assemblymen at eighty, and provided that legislators should not be allowed salary for more than sixty days, except in 1880, when they should be paid for one hundred days. Every bill was to embrace but one subject, which should be expressed in its title; it was with any amendments to it to be printed, and to be read on three several days in each house, unless in case of urgency this provision should be dispensed with by a two-thirds vote. As to the executive department, on the other hand, not much change was made, except fixing the election of governor and other state officers—after those to be elected in 1879, who were to hold for three years—on the first Tuesday after the first Monday of November, 1882 and on the same day every fourth year thereafter; making their four-year terms commence on the first Monday after the first day of January after their election, and giving the governor power to disapprove special items in appropriation bills and to approve bills, not presented to him ten days before the adjournment of the legislature, within ten days after such adjournment. Another

provision, intended to prevent the repetition of an old abuse or scheming for it, expressly prohibited the governor from being elected to the United States senate during his term of office.

There was, however, a very general remodeling of the judicial department. Under the constitution of 1849, amended in 1862, the judicial power was vested in a supreme court, consisting of five justices holding for ten years; fourteen district courts, subject to increase in number by the legislature, with judges holding for six years; county courts, probate courts, justices of the peace and recorders' and other inferior courts established by the legislature in cities or towns. The justices and judges were to be elected only at special judicial elections. Under the new constitution, the supreme court was made to consist of a chief justice and six associate justices, who were to sit in departments or in bank and who were to hold for twelve years—except the first six associate justices were to so classify themselves by lot that two should go out in four years and two in eight years. They were to be elected at the general state elections; or, in other words, special judicial elections were abolished. Instead of district, county and probate courts, superior courts of general jurisdiction were erected, one for each county—having in the larger counties two or more judges and in San Francisco twelve, with power in the legislature to increase the number. These judges of the superior court were to hold for six years and to be elected at the general state elections. The legislature was to determine the number of justices of the peace to be elected in townships, cities and counties, cities and towns, and fix their powers, duties and responsibilities—provided such powers were not to trench upon the jurisdiction of the several courts of record, except that in certain cases of forcible entry and detainer and personal property liens they might have concurrent jurisdiction with the superior courts. The supreme court was to be always open, and the superior courts always except on legal holidays; or, in other words, what were known as "terms" of court were abolished. Under the old constitution, there was nothing to prevent judges from withholding decisions in lawsuits for almost any length of time, and there were in some cases great and oppressive delays: under the new constitution, no justice of

the supreme court or judge of the superior courts could draw his monthly salary, until he had made an affidavit that no cause in his court remained undecided, that had been submitted for decision for the period of ninety days.

When the constitution of 1849 was adopted, it was provided, on account of the large Spanish-speaking population, that all laws and other regulations, which from their nature required publication, should be published in Spanish as well as English; and, under old laws in some of the counties, certain judicial proceedings were allowed to be conducted in Spanish;¹ but under the new constitution, all laws, official writings and executive, legislative and judicial proceedings were required to be conducted, preserved and published in no other than the English language. Under the new constitution, no railroad or transportation company was allowed to grant a free pass or any ticket at a discount to any person holding an office of honor, trust or profit in the state; and the acceptance of such pass or ticket by any member of the legislature or any public officer, other than railroad commissioner, was to work a forfeiture of his office. The new constitution also prohibited the giving or loaning of the credit of the state or of any city and county, county, city or other political subdivision of the state in aid of any person, association or corporation; also the making of any gift or authorizing the making of any gift of any public money or thing of value to any individual or to any municipal or other corporation, except institutions under the exclusive management and control of the state and such aid as might be granted by the legislature for the support of orphans, abandoned children and aged persons in indigent circumstances; nor was the state or any political subdivision of it to subscribe for stock or become a stockholder in any corporation whatsoever. The university of California was recognized as a public trust to be perpetually continued in the form and character prescribed by its organic act, subject only to such legislative control as might be necessary to insure compliance with the terms of its endowments and the proper investment and security of its funds; it was to be maintained entirely independent of and kept free from all political

¹ Stats. 1851, 152.

and sectarian influence; and no person was to be debarred admission to any of its collegiate departments on account of sex. And it was further provided by the new constitution that eight hours should constitute a legal day's work on all public work, and that no person should on account of sex be disqualified from entering upon or pursuing any lawful business, vocation or profession.

As the sittings of the first constitutional convention were relieved by a few incidents out of the ordinary line, so were those of the second. One had its origin in a resolution, requiring the secretary of state to furnish all information in his possession in regard to the number, classification, capital stock and places of business of corporations, other than municipal, formed under the laws of the state. In reply, Secretary Thomas Beck reported that the information asked for was recorded in the books of his office; and, in order that the members of the convention might have it at as early a day as possible, he sent them his books, consisting of fifty-four large volumes, which they would find piled up on a table near the clerk's desk; and in conclusion he had the honor to be their obedient servant. It so happened that, in the course of the previous night, a large owl had entered the chamber through an open window and perched on the cornice over the president's chair, where he sat looking solemn and wise; and one of the delegates moved that Beck's report should be referred to it as the "rural member." For a while there was much levity; but, upon one of the more serious members pronouncing Beck's conduct an insult to the convention and the mover of the resolution complaining of the character of the report, the secretary of state found it necessary to apologize; disavow any want of respect; remove his books in a sadder spirit than he had produced them, and make a new and more satisfactory report. In the meanwhile, the owl was ejected; and afterwards all references in relation to it were stricken from the journal.¹ Another matter, not usual in constitutional conventions, was a commotion in reference to Charles C. O'Donnell, commonly called Dr. O'Donnell, one of the Workingmen's dele-

¹ Sacramento Record-Union, October 21 and 29, 1878; Debates and Proceedings of Convention, 163-175.

gates, who had been publicly charged by a San Francisco newspaper with being a quack, an imposter and a criminal practitioner. The charges attracted so much attention that another delegate of the Workingmen's party moved a committee of inquiry as to the infamous part of them. According to its report after investigation, it appeared that when the charges were first made in the newspaper, O'Donnell had commenced a prosecution against the publishers for criminal libel; that the defendants had set up in answer the truth of the charges made, and that the result of a trial on sworn testimony before the San Francisco court was a verdict that the charges were in substance true and the publication made with good motives and for justifiable ends. They therefore reported a resolution that O'Donnell should be expelled from the convention. But when the subject came up for determination, a motion to indefinitely postpone it prevailed by a vote of sixty-two ayes to fifty-eight noes, many of the latter being Workingmen's votes; and O'Donnell retained his seat.¹

Still another matter, which attracted much attention and evoked great discussion, was an inquiry as to whether Eugene Fawcett, a Non-partisan delegate from Santa Barbara county, who had been at the time of his election and was still judge of the district court of the first judicial district of the state, was eligible or could legally sit in the convention. The claim of those, who maintained that he was not eligible, was based upon a clause in the constitution of 1849 that justices of the supreme court, district judges and county judges should not be eligible to any other than a judicial office during the term for which they should have been elected. Upon reference of the subject to the judiciary committee of the convention, a large majority, consisting of fifteen members including Samuel M. Wilson as chairman, reported in favor of Fawcett on the ground that membership in a constitutional convention was not an office in the sense in which that term was used in the constitution; while a minority of three, headed by James McM. Shafter, reported the other way. A very long discussion ensued, with the result that Fawcett was retained in his seat by a vote of eighty-three against fifty-eight.²

¹ Debates and Proceedings of Convention, 835, 921, 965.

² Debates and Proceedings of Convention, 154, 172, 175, 180-192, 216.

An interesting question in reference to the same matter, and also involving the legality of the convention itself, was raised about the same time in the supreme court by Alfred A. Cohen, as attorney for Creed Haymond, in a case of certiorari to Fawcett's court. Cohen contended that Fawcett had not vacated his office of judge by accepting a seat in the convention; but it was not so much for the reason that, being a judge he was not eligible and could not lawfully accept such seat, but because the constitutional and legislative provisions for calling the convention and requiring abstracts and proof that a majority of all the electors, voting at the election, voted for a convention had not been complied with—in other words, because votes, that were not either for or against a convention but silent in that respect, had not been counted—and therefore the convention was not a legal body.¹ As it turned out, however, whatever may have been the facts as to this claim or the force of this argument, the case in the supreme court was afterwards dropped, and never reached a decision.

By the terms of the act of March 30, 1878, for the election of delegates to the convention, it was provided that no compensation should be allowed them after the expiration of one hundred days; and one hundred and fifty thousand dollars were appropriated to pay expenses. The one hundred days expired on January 6, 1879. The rate, at which the appropriation had been drawn on, was indicated by the fact that on October 19, 1878, twenty-two days after the convention met, over forty thousand eight hundred and ninety dollars had been expended.² On January 2, 1879—in anticipation of the expiration of the one hundred days for which pay was to be allowed and the exhaustion of the appropriation—Charles G. Finney of Ventura county offered a resolution to the effect that, whereas the convention had been called only by a small majority of the people, showing that they were unprepared for any radical change in the organic law; and whereas the act under which it was convened had been passed by a hostile legislature that did not allow sufficient time or make sufficient provision for it; therefore, an adjournment should be taken on January 6 until the first Monday of September, 1880,

¹ Sacramento Record-Union, January 23, 1879.

² Sacramento Record-Union, October 21, 1878.

when it should re-assemble and proceed with its labors, provided the next legislature should in the meanwhile have made the necessary appropriations for its expenses. Finney had been elected as a Workingman; but, when he presented his resolution, he was greeted with the word "traitor" hissed through the hall. When he came to speak in favor of his proposition, he slung the taunting word back in the faces of the Workingmen's party and declared that he knew no party on the floor of the convention. But he was clearly not in accord with the majority of the convention, including all the other Workingmen; and his proposition was defeated by one hundred and fourteen votes against five.¹ That there were, however, some people in the state that went even further than Finney became apparent a few weeks later, when a petition was presented from sixty-three citizens of Knight's Ferry in Tuolumne county and vicinity, who expressed their belief that the convention could not frame a constitution that would be ratified by the people; that the Finney resolution ought to have been adopted with an amendment that the adjournment should be final, and that for the public good they prayed an adjournment sine die at the earliest possible time. This petition, as might have been expected, excited some levity and was finally tabled.²

The convention continued to sit for one hundred and fifty-seven days in all, or until Monday, March 3, 1879, on which day the new constitution, engrossed on parchment, was presented for signature. In addition to its various provisions different from the old constitution, most of which have been adverted to, it contained a clause that nothing in it should prevent the legislature from providing for the payment of the expenses of the convention, including the per diem of delegates for the full term thereof. It also provided for the necessary continuance of laws, rights and actions; for the change of courts and the transfer of causes; for its publication and distribution to every registered voter in the state; for an election for its adoption or rejection, to take place on the fourth Wednesday of May, 1879; for the proper returns and canvass of votes for and against it, and for due proclamation

¹ Debates and Proceedings of Convention, 880, 904.

² Debates and Proceedings of Convention, 1081.

of its adoption in case a majority of the ballots at such election should be in its favor. And finally, it provided that it was to take effect and be in force on and after July 4, 1879, at twelve o'clock meridian, so far as the election of officers, commencement of terms of office and meeting of the legislature were concerned; and for all other purposes on January 1, 1880, at noon. It was then, March 3, 1879, put to vote as a whole and adopted by one hundred and twenty ayes against fifteen noes, with two pairs and sixteen absent or not voting. The noes were William L. Dudley, John Eagon, Henry Edgerton, John S. Hager, John B. Hall, S. G. Hilborn, Thomas H. Laine, J. West Martin, Thomas B. McFarland, James M. Porter, Mark R. C. Pulliam, Patrick Reddy, James McM. Shafter, Rufus Shoemaker, Henry K. Turner, Byron Waters and Joseph W. Winans. Immediately after the vote, the president and secretary signed the document; and then all the other delegates present, one hundred and thirty-eight in number, were called up by the secretary, four at a time, and attached their signatures. Thirteen did not sign—William H. L. Barnes, John Berry, H. C. Boggs, Alexander Campbell, Eugene Casserly, D. H. Cowden, Robert Crouch, Eugene Fawcett, Charles G. Finney, John F. Miller, Alonzo E. Noel, A. P. Overton and Samuel M. Wilson. President Hoge thereupon presented the document to the secretary of state, to be deposited among the archives. An address to the voters of the state in favor of the proposed new scheme, prepared not by a committee but by a few members, was presented and adopted by a vote of one hundred and three for, to thirty against it; after which and some present-making and undignified levity, the convention adjourned sine die.¹

On May 7, 1879, in accordance with a proclamation by Governor Irwin, an election for the adoption or rejection of the new constitution took place throughout the state. As might have been expected, there was very great opposition to it by the more intelligent and conservative classes of citizens. Even in the city and county of San Francisco, where the voices of the sand-lots were loudest, there was a majority against it of nearly sixteen hundred out of a little over thirty-eight thousand votes. But

¹ Debates and Proceedings of Convention, 1508-1526; Sacramento Record-Union, March 4, 1879.

in the state at large, on account principally of the before-mentioned combination in its support of that portion of the agriculturalists called Grangers with the Workingmen, it was adopted by a majority of ten thousand eight hundred and twenty-five out of one hundred and forty-five thousand and ninety-three votes. In due time thereafter it was proclaimed; and thus, by a comparatively small majority of the persons voting and considerably less than a majority of the more than one hundred and sixty-one thousand electors entitled to vote, was the new instrument approved and ratified as the organic law of the land.¹

There can be no doubt that the constitution of 1879 was framed and adopted at a very unfortunate time and under very unfavorable circumstances. The people were too angry and desperate to make a good constitution. Railroad and labor troubles, worked up by demagogues, had made them mad. An insane desire to "cinch" capital and expel the Chinese had seized hold of men's minds and driven them into excesses; and the result was a constitution which was intended mainly, in so far as it differed from the constitution of 1849, to accomplish these objects and which, if carried out in these respects as designed, would have made California a sad spectacle to nations. But as it turned out, a conservative supreme court and legislature prevented to a very great extent the intended cinching of capital, and the plain rights of the Chinese under the Burlingame treaty were too solidly established to be very much affected by the unconstitutional clauses of the new constitution against them. In most other respects, in which the constitution of 1879 differed from that of 1849, the changes were occasioned by abuses by legislatures and officers of their powers, so that it was thought necessary to confine and restrict them within narrow limits. But, while some benefits have accrued as results of the new limitations, they have not been unmixed benefits. The difficulty was that they went too far. Almost as much was lost, by preventing, in this too sweeping and indiscriminate manner, action which might have been of benefit, as was gained by preventing action which would have been of injury. While for instance it cannot be denied that great wrongs were committed under the old consti-

¹ Davis' Political Conventions, 393.

tution by special legislation, at the same time special acts, which might be of great beneficence, cannot be passed. The trouble was not so much the old constitution, as the legislators and officers, whom the people saw fit to elect and intrust with authority of which they were not worthy.¹

In addition to the fact of the comparatively small majority of votes for the new constitution, so different from the substantial unanimity of the vote on the old constitution, it is also to be remarked that in the convention, the majority of the delegates voting for it was not composed altogether of the most intelligent or best members. Almost every broad-minded, able and experienced delegate either voted directly against it or did not vote at all; and, with very few exceptions, none entitled to that designation voted for it. As a rule, the better class men felt like Henry Edgerton, who declared that he was in favor of retaining as far as possible the old constitution; that he was "very much enamored of it; positively opposed to laying irreverent hands on it,"² or like Alexander Campbell, who, in a discussion in reference to military affairs, declared that he was "opposed to tinkering the old constitution in every section and desired to have it left just where it was."³

¹ Overland Monthly, January, 1883, 34-41.

² Debates and Proceedings of Convention, 154.

³ Debates and Proceedings of Convention, 731.

CHAPTER XII.

PERKINS.

THE next general election after the adoption of the new constitution, at which a complete new set of state officers was to be chosen, was to take place on Wednesday, September 3, 1879. In view of its importance, the different parties at once commenced preparing for the conflict. The Republicans had already in March called a state convention to meet at Sacramento on June 17. On May 22 the Republican state central committee issued an address to the effect—in addition to the usual clauses on national political affairs—that the Republican party, being pre-eminently the representative of loyalty, respect for law and faithful adherence to compact, accepted the new constitution as an absolute finality and pledged itself to a faithful and effective administration of its provisions in all honesty and sincerity. At the time appointed, the convention met at Sacramento and adopted a platform, recognizing the new constitution and, among other things, demanding the discouragement of monopolies by corporations or individuals, the restriction of Chinese immigration, the promotion of education, the encouragement of all the industries of the state, the protection of vested rights and the reduction of freights and fares, upon all railroad lines in the state that had received state or national aid, of at least twenty-five per cent. It then proceeded to nominate a complete state ticket, with George C. Perkins for governor, John Mansfield for lieutenant-governor, and Augustus L. Rhodes for chief justice of the supreme court. District conventions soon afterwards nominated candidates for railroad commissioners, for members of the state board of equalization, for senators and assemblymen; and about the same time candidates for representatives in congress were named.

Sacramento was also the place of the Democratic state convention, which was held on July 1. That body adopted resolutions that the Democratic party was the only one that had always observed, obeyed and maintained the federal constitution, and was therefore the only one which the people could safely trust to administer the new organic law of the state. It declared itself in favor of the indissoluble union of indestructible states, under the paramount authority of the federal constitution in all powers not reserved by the states; against the interference by federal officials, under "odious laws of Republican origin and adoption," in elections in the states or any of them; denouncing the "repeated abuses of the vetoes of Rutherford B. Hayes, sitting as the executive officer of the government, in defeating the will of the people as expressed by congress;" in favor of reform, retrenchment and the utmost economy compatible with good government; against the "evil and curse of coolie importation," antagonism to which it declared itself to have been the first to proclaim; in favor of compelling the Pacific railroads to pay interest on their bonds and reducing railroad freights and fares, and in favor of affording the fullest protection of the state government to mining as the original and still important industry of California—though the last resolution was subsequently changed so as to include agriculture with mining as "the foreshadowing interests of California." It nominated Hugh J. Glenn for governor, Levi Chase for lieutenant-governor, Robert F. Morrison for chief justice, and also candidates for all state and other offices to be filled.

On June 3, the Workingmen held their state convention at San Francisco; and Kearney presided. They adopted, as a platform and declaration of principles, a very long list of propositions, consisting of many enunciated in the new constitution which was to be enforced in letter and spirit, and many outside of it. One clause, utterly repudiating "all spirit of communism or agrarianism," was objected to by Kearney; but, finding himself about to be overruled by the convention, he withdrew his motion to strike it out and thenceforth held his peace. Another clause, or series of clauses, declared that vested rights in property must be respected but that land monopoly must be prohibited; that

appropriations of water for supplying any municipality, not carried into actual operation by the construction of water works and furnishing of water, should be declared void; and that corporations must discharge their Chinese employees, or go out of business. Other clauses were to the effect that no foreigner ineligible to citizenship should be licensed to peddle goods or commodities of any character in the state, and that laws must be passed to purge the community of the presence of the Chinese and prevent them acquiring any further foothold. Interest on money should not exceed six per cent per annum, and contracts by debtors for payment of fees of attorneys of creditors should be prohibited. A curious clause was one by which the Workingmen's party announced that "to further secure the efficiency of the new organic law, we will attack its opponents with the most effective weapons; but among ourselves, in differences of opinion, we will allow liberal discussion, give considerate attention and exercise the largest charity." It then nominated William F. White for governor, W. R. Andrus for lieutenant-governor, Robert F. Morrison for chief justice and a full state ticket.

In the meanwhile a new party had started, consisting of persons, who could not well affiliate with other parties, and disappointed politicians, who anticipated a popular tidal wave upon which they might ride into prominence by taking it at flood. It called itself the New-constitution party. It held its first meeting at Stockton on May 10, a week after the new-constitution election. On May 17, or two weeks after the election, it held a sort of mass-meeting at San Francisco, which adopted a preamble and resolutions to the effect that, whereas the victory had been achieved by the united efforts of men of integrity and patriotism in the three existing parties in the state; and whereas, if the duty of construing and putting in force the new constitution were handed over to persons and corporations opposed to its adoption, instead of relieving the state and its citizens of the burdens which overwhelmed them in the shape of monopoly, power, greed, fraud, dishonest government and unjust and unequal taxation, it would be turned into an engine of oppression, and the efforts of its friends rendered futile and of no avail;

therefore, resolved: that, for the good of the state, all past political differences should be sunk until California was firmly and securely planted upon the foundation of the new constitution; and that the paramount duty of the hour was to devote all energies to the work of electing such state officers as would enforce the new organic law in the spirit of fairness intended by its framers, and promote peace and prosperity where theretofore only injustice and discontent had prevailed. It had been expected that the new movement, thus early in the field, would capture the Workingmen; but they declined to be caught and resolved not to affiliate with it. Subsequently, on June 25, the new party held a state convention at Sacramento; adopted resolutions reiterating and enlarging its previous declaration of principles, and nominated a state ticket with Hugh J. Glenn for governor, David C. Reed for lieutenant-governor and Nathaniel Bennett for chief justice. Subsequently, in July, an effort was made by the Democratic and New-constitution parties to consolidate their state tickets; but it did not succeed. The Democrats, who had adopted Hugh J. Glenn, the New-constitution candidate for governor, refused to change. At this, the New-constitution party took into consideration the advisability of removing Glenn from their ticket, but decided to allow him to remain. Next the Democrats considered the same proposition and called Glenn before them, when he avowed that he had first been nominated by the New-constitution party and in justice was obliged to support their platform and ticket; notwithstanding which, to the disgust of some and the surprise of many, his name was allowed to remain on the Democratic ticket. It was an unusual spectacle—a standard-bearer of the Democratic party, who openly declared that he would not vote the Democratic ticket.¹

The campaign was vigorous and warm. It resulted in a Republican victory. Perkins was elected governor by sixty-seven thousand nine hundred and sixty-six votes over forty-seven thousand six hundred and sixty-five for Glenn, and forty-four thousand four hundred and eighty-two for White—a plurality of over twenty thousand. All the other Republicans on the general state

¹ Davis' Political Conventions, 393-419.

ticket were elected by even larger pluralities, except justices of the supreme court—the successful of whom, save Milton H. Myrick, were on several of the tickets. Morrison was chosen chief justice by seventy-two thousand five hundred and eighty-eight votes to sixty-eight thousand two hundred and thirty-six for Rhodés and nineteen thousand nine hundred and six for Bennett. The justices chosen were Elisha W. McKinstry, James D. Thornton, Samuel B. McKee and Erskine M. Ross, Democrats; John R. Sharpstein, Workingman, and Milton H. Myrick, Republican. A few votes, hardly a hundred in number, were thrown in favor of a state ticket of the Prohibition party, which had been regularly nominated but afterwards withdrawn. Among the district officers chosen were: for the state board of equalization, James L. King, Moses M. Drew, Warren Dutton, Republicans, and Tyler D. Heiskell, Democrat; for the railroad commission, Joseph S. Cone, Republican, Charles J. Beerstecher, Workingman, and George Stoneman, Democrat; for congress, Horace Davis, Horace F. Page and Romualdo Pacheco, Republicans, and Campbell P. Berry, Democrat.¹ In addition to the almost general victory of the Republicans in respect to the officers above mentioned, they also elected a majority of both the senate and assembly—though San Francisco sent delegations whose majorities were Workingmen. Next to the Republicans the Workingmen had the largest number of votes in each house; and the Democrats had only a small minority.

In accordance with the new constitution, the next legislature met at Sacramento on January 5, 1880. It consisted of forty senators elected for three years and eighty assemblymen elected for one year. On January 6, Governor Irwin presented his last message. It was very full. He remarked, among other things, that when the last previous legislature met, there was a general stagnation of business throughout the country and a difficulty for laborers to obtain employment, but there had been some improvement since then. He next noticed the adoption of the new constitution and the very great opposition that had been made to it, closing his remarks with the significant observation that no other method was so effectual to secure the repeal of an

¹ Senate Journal, 1880, 12; Davis' Political Conventions, 419-421.

unwise or oppressive law as its strict enforcement. He stated the total funded debt of the state on June 30, 1879, to have been three million four hundred and three thousand dollars. He called attention to the fact that the state under an act of April 4, 1864, to aid the construction of the Central Pacific railroad, was paying interest at the rate of seven per cent per annum on a million and a half of railroad bonds, which however would mature in 1884, when the state's obligation to pay interest would cease. He claimed that the state was thus paying one hundred and five thousand dollars a year for at best only a few hundred dollars worth of service; and he intimated that it would not be paying anything—except for a decision of the supreme court in 1865, which held that the inhibition of the old constitution against the creation by the state of any debt or liability exceeding three hundred thousand dollars except in case of war, invasion or insurrection, without an authorization by a vote of the people, did not apply, for the reason that the debt contracted on behalf of the Central Pacific railroad was for a war or insurrection purpose.¹ He further remarked that, with the object of preventing any further legislation of that kind and to restrict the unlimited power of levying taxes and making appropriations, an amendment of the old constitution was in 1866 adopted and in 1871 ratified, which prohibited the legislature from making an appropriation for any purpose whatever for a longer period than two years.² But, strange to say, both this provision and that restricting state indebtedness had been entirely left out of the new constitution. On the other hand, he called attention to the fact that the state board of equalization, provided for by the code in 1873, had been shorn of its powers by another decision of the supreme court;³ but he supposed, and evidently hoped, that the new constitution would furnish the proper remedy.

Irwin spoke favorably of the operation of an act of March 30, 1878, creating a board of bank commissioners, which had been passed at his recommendation. In reference to the question of railroad freights and fares, then attracting much public attention,

¹ *People vs. Pacheco*, 27 Cal. 175.

² Art. I, sec. 22, of old constitution; Stats. 1869-70, 367.

³ *Savings and Loan Society vs. Austin*, 46 Cal. 415.

he said that the right of the state to regulate them had been settled by the supreme court of the United States in the so-called Granger cases; and he proceeded to discuss at some length what rates should be established. As to Chinese immigration, he called attention to an act of December 21, 1877, for the submission of the question to popular vote,¹ and stated that the result of the submission at the general election of September 3, 1879, was a total of one hundred and sixty-one thousand four hundred and five votes, of which one hundred and fifty-four thousand six hundred and thirty-eight were against Chinese immigration to eight hundred and eighty-three in favor of it and five thousand eight hundred and eighty-four silent on the subject. But he added, like a good constitutional expounder as he was, that the state was practically powerless to deal with the subject and relief only to be looked for from congress and federal authority. And in conclusion, referring to the numerous amendments that would be necessary to fit the codes to the new constitution, he stated that he, in conjunction with the new governor who was about to succeed him, had requested Isaac S. Belcher, Thomas P. Stoney and Abraham C. Freeman to prepare the necessary amendments—at the same time admitting that neither of them had any power to make such appointments.²

George C. Perkins, the new governor and the first under the new constitution, was born in Kennebunkport, Maine, on August 23, 1839. At the age of twelve years he ran away, or rather stowed himself away, on a vessel bound from that place for New Orleans. Upon being discovered after leaving port, he was accepted by the captain as one of the hands; and for the next four years he led a sea-faring life. In October, 1855, he came to California and, working his way to the Northern Mines, tried his fortune at washing gold; but, after a few months' labor, finding it not congenial, he went down to Oroville and became porter in a general merchandise store. His energy and ability soon procured him promotion to a clerkship; and not very long afterwards he became owner of the establishment. He married in 1864. About the same time, in connection with N. D. Rideout

¹ Stats. 1877-8, 3, 740.

² 5 Appendix to Legislative Journals, 1880.

and other prominent men of the place, he established the Bank of Butte County, of which he became a director. In 1869 he was elected to the state senate from Butte county and served in the sessions of 1869-70 and 1871-2. In 1873 he was again elected to the state senate to fill the unexpired term of Senator David Boucher, who died in September, 1872, and served in the session of 1873-4. In the meanwhile, in 1872, he had become a partner in the San Francisco firm of Goodall & Nelson, afterwards known as Goodall, Perkins & Co., in the shipping business. That firm, in connection with the corporation known as the Pacific Coast Steamship Company, of which they were the principal incorporators, soon became the owners of most of the coast-line steamers and gradually extended their line north and south until they did almost all the coasting business by steamers out of San Francisco. Though necessarily much occupied in his shipping and other affairs, he accepted an appointment by Governor Irwin as trustee of the Napa insane asylum in 1878, and in 1879 was president of the San Francisco chamber of commerce. In June, 1879, as already stated, he was nominated by the Republican party for governor and elected in September.¹

Perkins' inauguration took place before a joint convention of the two houses of the legislature on January 8, 1880. In his inaugural remarks, he turned his attention first to matters of agricultural interest and, in connection with a reference to the prohibition of contracting of state prison labor after January 1, 1882, suggested that upwards of twenty-five millions of grain sacks were needed in the state annually. This, though it may not have been the first mention of what has since become the great jute-bag manufacturing industry at San Quentin, was the first gubernatorial recommendation of it. He also recommended the establishment of a branch of the government bureau of agriculture on the Pacific coast. Turning next to the mining interest, he remarked that California had produced over twelve hundred and fifty millions of dollars worth of gold. In the same connection, he remarked that the state geological survey had been substantially barren of useful results; that the school of mines in the university had not as yet received an outfit, and that its

¹ Davis' Political Conventions, 601.

chair was vacant. He mentioned the mining-débris and agricultural-irrigation problems as two most important questions to be settled, and referred them to the careful consideration of the legislature. He thought new legislation would be found necessary in reference to revenue—as the mortgage tax, provided for by the new constitution, would not produce any addition, over the old system, to the public funds. He announced himself in favor of a tax upon all incomes in the state exceeding five thousand dollars per annum, and also in favor of taxing uncultivated land equally with cultivated land of the same quality and similarly situated. He adverted at some length to the great national questions then pending in reference to elections in the southern states; said that thousands and thousands of freedmen in those states were being forcibly prevented from voting, and declared that they should be protected by the government in their rights of suffrage. He pronounced the state university the “crowning glory of our educational system,” deserving of liberal encouragement, and recommended state aid for the support of orphans and orphan asylums.¹

Almost immediately upon the organization of the legislature, each house was almost flooded with propositions somewhat similar to, but even more extravagant than, the hundreds presented to the constitutional convention. Most of them were aimed directly or indirectly at the Chinese; and it seemed as if every member, who had a desire to gain popular favor, thought it necessary, in proportion to his ambition, to introduce stringent bills and cry out against Mongolians and Asiatics. There were also large numbers of bills designed to cinch capital, destroy corporations and in substance put an end to vested rights; but they were mostly throttled in short order by the conservative members; and, as this was usually accomplished in the most effective way, the legislature of 1880 might be called one pre-eminently of indefinite postponements. On the other hand, many bills were presented for the purpose of amending the codes and making them fit the new constitution; and a large number of these were passed, including some recommended by the committee appointed by Irwin and Perkins. The result was

¹6 Appendix to Legislative Journals, 1880.

a very complete remodeling of the code of civil procedure and a more or less complete remodeling of the other codes.

One of the first questions encountered under the new constitution was as to the three readings of bills. The constitutional provisions on the point were that no bill should "become a law unless the same be read on three several days in each house, unless, in cases of urgency, two-thirds of the house where such bill may be pending, shall, by a vote of yeas and nays, dispense with this provision," and that "on the final passage of all bills they shall be read at length." It was argued on the one side that the well-settled meaning of the word "reading" in parliamentary law was a reading by title alone; that therefore a first and second reading by title would be sufficient; that such was evidently the intention of the constitution, not only because it was supposed to use parliamentary language but also because it specifically provided that the third reading must be "at length," and that, as every bill with its amendments had to be printed for the use of members before it could be put upon its passage, there could be no need of reading it three times at length. On the other hand, it was argued that the new constitution was supposed to use words in their common signification; that when it provided that a bill was to be "read," it meant to be read through; that the requirement that it should be "read at length" on final passage did not affect the meaning of the word "read" as used before, and that the intention of the new constitution was that legislators should not lack knowledge of bills for want of reading. Though the first-mentioned arguments were most generally adopted, the last had adherents. To settle the matter, it was proposed to apply to the supreme court for its opinion; but, on further consideration, an act authorizing the transfer of three hundred and fifty dollars from the state general fund to the school fund, after being read the first and second times only by title, was passed by both houses and approved by the governor.¹ The transfer of funds, thus provided for, being refused on the ground that the act had not been constitutionally passed, a case was made up for the supreme court and submitted to that tribunal. It decided promptly that the constitution required a

¹ Stats. 1880, I.

full reading at length on three several days, except in cases of urgency.¹ Thereupon the bills that had been read only by title were read over at length on three several days; and such became the settled rule of construction in California. Notwithstanding the decision and construction thus settled, John F. Cowdery, speaker of the assembly, in his valedictory remarks at the end of the session, took occasion to say that much valuable time had been lost by enforcing the reading of bills three times at length; that at least on the first reading, though the bill had to be read, nobody listened and no court could compel anybody to listen; and he concluded with an observation that it was to be regretted that the opinion of the supreme court had ever been asked.²

Several attempts were made to impose a chaplain upon the senate, but without success; while in the assembly, which perhaps had greater need, a chaplain was chosen.³ A resolution in the senate to amend the constitution in order to confer upon women the elective franchise was lost by the want of two votes. In the assembly a bill to enable women to vote upon all matters relating to the public schools was passed by a vote of forty-two to thirty-seven; but the next day there was a reconsideration, and the subject indefinitely postponed.⁴ A bill for a labor bureau, passed by the assembly, failed to pass the senate.⁵ A number of bills in the senate for the relief of John Hoagland and others, who had suffered injury to their farms along the Sacramento river in a season of flood, claimed to have been increased, if not entirely produced, by a change made by the state in the channel of the American river, were withdrawn after the first one had been indefinitely postponed. These claimants had been before the legislature for years and had been authorized to sue the state, but failed to recover judgment and then recommended their siege of the legislature for relief. It may be added that the siege was persistently kept up until 1885,

¹Weill *vs.* Kenfield, 54 Cal. 111.

²Senate Journal, 1880, 17, 48, 75, 124, 130; Assembly Journal, 1880, 13, 24, 72, 167, 895.

³Senate Journal, 1880, 8, 27, 28, 96, 155; Assembly Journal, 1880, 14, 15.

⁴Senate Journal, 1880, 247, 474; Assembly Journal, 1880, 604, 607.

⁵Senate Journal, 1880, 781.

when they succeeded in procuring another act allowing them to sue the state and appropriating thirty-five thousand dollars to meet any judgment they might obtain, provided they would be satisfied with that amount and ask no more.¹ As to the acts passed in 1880, in addition to those remodeling the codes already adverted to, a number of other important ones may be mentioned. Among them were an act repealing the so-called "Rogers' act," authorizing San Francisco to provide new water works; several acts for the repeal of acts for the destruction of squirrels; an act for publication of the debates of the constitutional convention of 1878-9; an act regulating the state prisons; a new act for the relief of insolvents; an act establishing a mining bureau; an act to promote drainage; an act to establish free public libraries and reading-rooms; and an act to provide for the organization, incorporation and government of merged and consolidated cities and counties of more than one hundred thousand population.² The last-mentioned act, intended for San Francisco and usually known as the "McClure charter," was an attempt, in as far as possible, to collate and re-enact the famous consolidation act of San Francisco and its numerous amendments, with only such changes as were made necessary by the new constitution; but soon after its passage it was declared unconstitutional by the supreme court;³ and since that time San Francisco, which has repeatedly refused to adopt a so-called freeholders' charter—such at least as have been submitted to it—has been obliged to find its governing law scattered in many volumes of the statutes, commencing in 1856.

Among the numerous anti-Chinese propositions presented at this session, though most were defeated, a few passed. They were chiefly: an act to promote emigration from the state; an act for the removal of Chinese, whose presence is dangerous to the well-being of communities, outside the limits of cities and towns; an act to prohibit the issuance of licenses to aliens, not eligible to become electors; amendments to the penal code, making the employment of Chinese by corporations or any of

¹ Senate Journal, 1880, 562; Stats. 1885, 107.

² Stats. 1880, 1, 7, 17, 67, 82, 105, 115, 120, 123, 137, 221.

³ Desmond *vs.* Dunn, 55 Cal. 242.

their officers, agents or servants, a misdemeanor; and an act relating to fishing in the waters of the state.¹ As to the other — numerous propositions—perhaps not much more unconstitutional than those above mentioned—was one to provide for the keeping of accounts in the English or some European language, which passed the assembly almost unanimously but failed in the senate; one to brand and banish Mongolian convicts, and one to make the secreting or storing human bones in places other than those authorized by law a misdemeanor—the intention being to prevent the Chinese from sending the bones of their dead back to China, as was their practice. It may be added that a numerously-signed memorial from citizens of Oakland and its neighborhood was presented to the senate against the passage of the generality of the anti-Chinese bills; while on the other hand the assembly granted the use of its chamber to O. C. Wheeler, a Baptist preacher, for the purposes of a lecture against Chinese immigration.²

In the senate, towards the end of the session, Thomas Kane, in the course of remarks on the bill to promote drainage, announced that an attempt had been made to bribe him by an offer of five hundred dollars if he would vote for the bill, and five hundred dollars more if the bill passed. He was asked to name the person who had made the offer; but he refused to give it. The senate at once appointed a committee of investigation, which took Kane's testimony; but he still refused to divulge the name. The senate thereupon cited him before its bar and, on his continued refusal though he made an ample apology disclaiming any disrespect, committed him for contempt and sent him to the Sacramento county jail, where he remained about a week and until the end of the session.³ In the assembly Samuel Braunhart, after several times interrupting the speaker in putting a question and refusing to take his seat, was ordered under arrest. Being brought before the bar of the house, he again used disorderly language and was by vote suspended from the privilege of the floor for three days. Being still determined not

¹ Stats. 1880, 15, 22, 39, 123; Amendments to Codes, 1880, 1, 2.

² Senate Journal, 1880, 168; Assembly Journal, 1880, 69, 70, 452, 526.

³ Senate Journal, 1880, 634, 643, 676, 678.

to submit, he persisted in addressing the house, when it ordered the sergeant-at-arms to take and keep him in charge until his term of suspension should expire. He was, however, allowed to proceed, in charge of the sergeant-at-arms, to San Francisco for the purpose of suing out a writ of habeas corpus before the supreme court and thus testing the legality of his detention. But before the supreme court could hear the case, the period of suspension and custody expired; and he was released and the writ discharged. A few days subsequently, Braunhart was again disposed to be disrespectful; but, soon afterwards recognizing his fault and making an ample apology, he was excused by unanimous vote; and pleasant relations were resumed.¹ Meanwhile Dennis Kearney, who had been hanging around the desks of Workingmen assemblymen for the purpose of prompting them, had managed to make himself so offensive that on vote the floor was cleared. This angered Kearney to such a degree that, immediately after the adjournment for the day but on the floor of the house, he made an abusive, insulting and threatening attack upon assemblyman James Adams on account of his vote for the clearance. On the matter being brought to the attention of the assembly, a resolution was adopted excluding Kearney from its chamber, from all the galleries, lobbies, halls and ante-chambers thereto attached, from the rooms of the sergeant-at-arms and from all committee rooms for the entire remainder of the session; and directions were given to see that the resolution was enforced not only during hours of actual session but during all hours and at all times.²

But, notwithstanding some unpleasantnesses, the legislature of 1880 performed its great task well. It worked hard and it worked persistently. It may have made mistakes, and there may have been corrupt votes cast; but, taken all in all, its purposes were pure and its objects the conservation of law and the public welfare. Had a considerable majority of each house been elected by the same votes that adopted the new constitution, or had the same influences been predominant that in great part prevailed in the constitutional convention of 1878-9, the

¹ Assembly Journal, 1880, 365, 367, 375, 405, 447.

² Assembly Journal, 1880, 368, 406-408.

result might have been different. Fortunately the conservative element preponderated; and the main purpose of the majorities in each house was to stay the tide of encroachment and preserve existing institutions as far as could be done under existing circumstances. The dominant party had as a general rule opposed the new constitution; but, after its adoption, they recognized it with all its provisions as the supreme law of the land. They, however, insisted that it was to be interpreted as essentially a conservative instrument; and they managed to make good their conservative claims with conservative votes. Their peculiar position, in contradistinction to that of their antagonists, grew out of the fact that there were two ways of construing the instrument—one, according to its strict letter, and the other, according to what might be supposed to be its spirit. Under the first method, by restricting and confining legislation within the strict letter of the instrument, the most serious attacks upon capital and corporations could be thwarted or rendered comparatively innocuous; while under the other method almost every institution and enterprise, founded upon capital, might have been endangered. On this account the conservatives became very strict constructionists and in this way advocates of the new constitution; while their opponents were disposed to read between the lines and therefore did not, so generally as might have been expected, invoke its exact language.

The main objects of the legislature of 1880, however, in addition to providing for the carrying on of the government, were the amendment of the codes and putting in operation the new system; and in accomplishing these purposes there was in most respects great unanimity and good feeling on all sides. Almost everything that the new constitution required and all that was indispensably necessary to fit the new order of things was done. The very magnitude of these objects, and the necessity felt in every quarter of getting through with them in the short time allowed, not only demanded, but in a great measure secured, unanimity. There were, it is true, some matters and particularly in reference to revenue, county government and elections that occasioned severe and bitter contests; but in general all code amendments, after being reported from the appropriate com-

mittees, passed without much opposition. Hardly anything in the way of important legislation could have been smoother than the manner in which most of the code amendments were adopted. On the other hand, in the management and discussion of matters of contention, though there were occasional exhibitions of sectional prejudice and sometimes of political or individual passion, there was nothing very serious of either kind. The talk was in some cases acrimonious; but no one was very angry. In fact the real feelings of the members towards one another were exceptionally kindly; and, when they came to part at the end of the session, they parted in good humor. The arrows that had been thrown were not envenomed. They caused no rankling wounds or festering sores. Considering the heterogeneous composition of the two houses and the circumstances under which they were brought together and under which they acted when brought together, and especially in view of their great labor and the important work they did—second only to that of the first legislature under the first constitution—great praise is due to them.¹

In San Francisco, as has been already stated, the Workingmen's party had greater swing than in the state at large and, though restrained from open violence by a healthy fear of the "pick-handle brigade," they nevertheless continued to be loud. In June, 1879, soon after nominating their state ticket, they nominated a city and county ticket, with Rev. Isaac S. Kalloch, a Baptist preacher, at the head of it for the office of mayor. During the campaign the San Francisco Chronicle newspaper attacked Kalloch as an improper person and published some damaging statements against him. Kalloch answered from his pulpit by attacking the mother of Charles and Michael H. De Young, the proprietors of the newspaper. Charles De Young, resenting this dastardly attack, on August 26, 1879, drove to Kalloch's study in Metropolitan Temple on Fifth street and, calling him out, shot and seriously wounded him. The assault created a great deal of excitement, which was skillfully taken advantage of by the Workingmen; and Kalloch was elected mayor by a large majority and duly inducted into office. The

¹ Berkeley Quarterly, July, 1880, 234-240.

newspaper, however, continued to assail him and having at last got hold of and published something more than ordinarily damaging to the mayor's good name and reputation, Rev. Isaac M. Kalloch, the mayor's son and also a Baptist preacher, on April 23, 1880, proceeded to the Chronicle office; surprised Charles De Young in an unguarded moment, and shot him to death. De Young was to have been tried for his assault with a deadly weapon; but his death put an end to the proceedings. Young Kalloch was afterwards prosecuted for murder, but was acquitted by the jury impaneled to try him.

Almost immediately after the adjournment of the legislature of 1880, which took place on April 16, the different parties commenced preparing for the national conventions for nomination of president and vice-president of the United States and choosing their delegates. The Democrats favored Allen G. Thurman for president; and a majority of the Workingmen seemed to have the same preference. The Republicans on the other hand were strongly in favor of James G. Blaine for president and instructed their delegates "to vote as a unit—first, last and all the time" for him. When the nominations came to be made, however, Winfield S. Hancock was named for president and Thomas D. English for vice-president by the Democrats at Cincinnati; and James A. Garfield and Chester A. Arthur for the same offices by the Republicans at Chicago. Though these candidates were not first choice of the Californian parties, they were accepted; and soon afterwards six electors were nominated by each of the political parties, including a so-called National Greenback Labor party and a Prohibition party. Congressmen and assemblymen were also nominated in the different districts. The election was held on November 2, 1880, and resulted in the choice of the Democratic electors by an average vote of about eighty thousand four hundred and twenty-eight votes as against an average of eighty thousand two hundred and forty-six for the Republicans—with the exception that David S. Terry, Democrat, was defeated, for the want of nearly five hundred votes, by Henry Edgerton, Republican. The Greenback Labor party polled an average of three thousand three hundred and seventy; and the Prohibition an average of fifty-five. Of the candidates

for congress, William S. Rosecrans and Campbell P. Berry, Democrats, and Horace F. Page and Romualdo Pacheco, Republicans, were elected. The new assembly had a majority of Republicans.

As the new constitution required the legislature to meet again in 1881, that body convened, in accordance with its provisions, at Sacramento on January 3. Perkins presented his first regular message the same day. He said that the year just past had been propitious and the condition of the state on the whole prosperous. As one evidence of this, he stated that the assessed value of property had been increased more than one hundred and eighteen and a half millions of dollars; but at the same time he added that the taxation, occasioned by the new constitution, had also been increased. He next adverted to the fact that the power of the state board of equalization had been neutralized by a decision of the supreme court; and he went on to suggest that a new constitutional amendment of the new constitution was a necessity. He then touched on the public schools and said that, while in 1849 the first public school had opened at San Francisco with only three pupils, the attendance had grown in thirty-one years to over a hundred thousand, and the value of public school property increased from nothing to some seven millions of dollars; but he added that over fifty thousand children in the state had not attended any school, and in this respect the condition of affairs was not satisfactory. He also adverted to the reforms in the judiciary department, but pointed out that costs in judicial proceedings, and particularly in cases of attachments, foreclosures and settlement of estates in probate, were excessive; and he recommended radical changes. He called attention to the fact that the county government act, passed at the last session, had been declared unconstitutional and spoke of the need of new legislation for county, as also for city and town, government. There was a necessity, he thought, for something to be done in favor of immigration, for the reason that for five years it had substantially stopped—in part at least on account of the turbulent agitation about Chinese and labor troubles. He therefore recommended that publications should be made under authority of the state of its resources, prices and locations with the object

of attracting desirable new population. He expressed himself against the doctrine of riparian rights as to the southern portion of the state, or what he called the irrigable sections, and called attention to the reports of the state engineer on the questions of drainage, irrigation and the effects of hydraulic mining. He favored a labor bureau as an institution that had given satisfaction in other states, and said that six thousand dollars had been appropriated for the purpose by the last legislature but had remained unexpended on account of the failure of the bill for its creation. He spoke also of the state prisons, reform schools and juvenile offenders; stated that on June 30, 1880, there were eleven hundred and sixteen patients at Stockton and eight hundred and thirty-nine at Napa; considered it necessary to keep up and maintain the National Guard, and expressed himself opposed to permitting charges to be made for traveling over the trails in the Yosemite valley and Mariposa big-tree grove. He likewise mentioned a marked decrease of receipts by the state harbor commissioners and accounted for it by the previous financial depression over the whole country; and in conclusion he spoke of the laws recently passed against the Chinese as not the proper method of getting rid of them, and of the rights of women to the elective franchise.¹

The term of United States Senator Newton Booth, who had been elected on December 20, 1873, for a full term to commence on March 4, 1875, was to expire on March 3, 1881; and, under the act of congress upon the subject, it became necessary for the legislature of 1881 to elect a successor. On January 13, the second Tuesday after the meeting and organization of the legislature, as prescribed by law, the subject was taken up in each house. The Republicans nominated John F. Miller; the Democrats William T. Wallace. In the senate, Henry George was nominated as a third candidate; and in the assembly, Campbell P. Berry. In the senate, Miller received twenty-seven votes, Wallace ten, and George two; and in the assembly, Miller forty-two, Wallace thirty-four, and Berry two. On the next day in joint assembly Miller was declared elected.² He soon afterwards pro-

¹ 1 Appendix to Legislative Journals, 1881.

² Senate Journal, 1881, 46, 47, 52.

ceeded to Washington, took his seat and became a very efficient member of the national council. He was especially active in bringing about a modification of the Burlingame treaty with China, and the acts of congress, passed during his incumbency, for the regulation of Chinese immigration. He, however, did not live to complete his term—dying at Washington on March 8, 1886, and leaving a vacancy of one year, which was afterwards filled in part, under appointment, by George Hearst, and in part, under election, by A. P. Williams.

On January 13, Perkins presented a special message on the drainage or, as it was more commonly called, the *débris* question. He said that, though the preservation of the navigability of the navigable waters should be a charge of the general government, the state had much to gain by a successful cure of the *débris* evil and much to lose by a failure of all attempts in that direction. He was of opinion that the state was not only under obligations to afford to the farmers the protection which it had persuaded them to cease seeking through the courts; but that, as it had sold its swamp and overflowed lands upon condition of reclamation by the purchasers, it should do nothing to hinder or prevent the fulfillment of that condition by permitting the rivers to be so filled up as to render all plans of reclamation futile. He had been assured by engineers, he continued, that the remedy of the *débris* evil was entirely practicable. The rivers could be made better than ever; but it would have to be by proper treatment, systematic and long continued. This—the relief of the state from the peril with which it was threatened by *débris*—was, he thought, the main duty of the hour. He had approved the drainage act of the last session because its principles seemed sound and he believed it would accomplish the desired purposes. And he hoped that further aid would be rendered and provision made “for the prosecution of such remedial works as shall restore the carrying capacity and navigability of our water-ways; deliver the farmers of the upper Sacramento from destruction from detritus and the farmers of the lower Sacramento from destruction by floods; enable our rivers to carry their highest flood waters without injury or danger to the country and the cities past which they flow; preserve the navigability of our river systems as high-

ways of commerce; remove all apprehensions concerning the bay of Suisun and the harbor of San Francisco; and at the same time permit the continuance of those mining operations which add so largely to the wealth of the community and support so considerable a percentage of the population."¹

Notwithstanding the *débris* message, there were many members of the legislature who did not believe in the methods contemplated by the state engineer and especially in those proposed by the drainage act of April 23, 1880. That act had met with great opposition at the time of its passage, particularly in the senate; and, though it passed, some who voted for it had doubts about its efficiency. The experience of a year seems to have convinced them that the act did not and could not accomplish the purpose designed; and they were ready, in so far as possible, to recall their action. An act to repeal the drainage act, introduced into the senate early in the session, was passed by that body by a vote of thirty-four to six; but in the assembly it was refused first reading by thirty-nine to thirty-five. This refusal of the assembly, however, made little difference, as the drainage act in the following July was by the supreme court declared unconstitutional;² and nothing was left as net result except a lot of worthless so-called *débris*-impounding dams on some of the rivers and a big bill of expense.

Under the provisions of the constitution, the legislative session of 1881—and the provisions applied to all subsequent sessions—was limited to sixty days or, what amounted to much the same thing, pay of members was not to be allowed for a longer period. The previous legislature had given their services gratuitously for an extra week for the purpose of finishing up their business; but, as it was not to be expected that this precedent would be followed, the legislature promptly determined to adjourn, at the expiration of the sixty days, on March 4. Not much had been accomplished; it was found impracticable under the circumstances to do anything in reference to a new system of county and city governments, contemplated by the new constitution, which in fact

¹ 1 Appendix to Legislative Journals, 1881.

² Senate Journal, 1881, 9, 216; Assembly Journal, 1881, 405; *People vs. Parks*, 58 Cal. 624.

required long and careful work; and many other important matters, including the general appropriation and tax levy bills, had to be, or at least were, passed by. On March 3, Perkins by special message called attention to the failure to pass these indispensable measures; but the reply was that the new constitution did not allow sufficient time to accomplish all that was required; and that all that could be done was to call an extra session. Both houses, in so far as there was an expression of opinion, seemed to favor an extra session; and on March 4, in accordance with previous determination, the legislature of 1881 adjourned for the session.¹

On March 24, 1881, feeling himself constrained by the situation of affairs, Perkins issued a proclamation to convene the legislature of 1881 in extra session. As required by the constitution, he stated the purposes of his call, which he gave as the passage of bills for general and deficiency appropriations, for tax levy, apportionment and a general road law, and the confirmation of executive appointments. He fixed April 4, 1881, as the time and limited, or rather attempted to limit, the period of the session to twenty days. The houses responded by re-assembling at the time appointed. Bills on the subjects indicated by the governor were introduced; and the necessary appropriation and tax levy acts were passed. A bill relating to highways and roads in the state was also passed; but some of its features evoked much opposition; and in the end Perkins vetoed it. He also exercised the power, given him by the constitution, to strike out several items, of which he disapproved, in the general appropriation bill. A special appropriation bill for payment of the expenses of the extra session, which though not named by Perkins in his proclamation was allowed by the constitution, was also passed. It appears to have been supposed by the governor on April 20, 1881, when he approved this bill, that the extra session would not last beyond the twenty days he had named; but at the expiration of that time neither the general appropriation nor the tax levy bill had been completed; and the houses, instead of sitting only twenty days, sat nineteen days longer, or in all thirty-nine days. Before the final adjournment, a bill to pay the

¹ Senate Journal, 1881, 378, 379, 395; Assembly Journal, 1881, 444, 478, 479.

additional expenses was passed; but when it came to the governor he vetoed it on the ground that forty-two thousand seven hundred dollars had already been appropriated for the extra session; and he thought that three weeks was ample time to do all that was required. The houses, however, took a different view of the subject and overruled the veto—the senate by twenty-eight votes against ten, and assembly by fifty-nine against nine.¹

The extra session came to an end on May 3, 1881. Upon the adjournment, William H. Parks, speaker of the assembly, took occasion to remark that the assembly had been subjected to criticism and misrepresented by the press. But time would make all things right. "I fear," he continued, "the public do not fully realize the difficulties surrounding the legislature under the present constitution. I would challenge the highest intelligence to frame the necessary laws in sixty days, let alone getting eighty men to agree to them. It will be a sad day for the state when it has a legislature that will legislate literally according to the letter of that marvelous instrument. What are legislators to do—make unconstitutional laws or disagree? What could they do but the latter? I believe the day near at hand when the constitution will be stripped of its evils by the voice of the people through the legislature or in a convention. Evil must be the state of affairs so long as it exists unchanged. Meanwhile, let the press howl. As for myself, I have the consciousness of having done my duty as I conceived it, faithfully to the people and under the dictates of my oath. I have had the support of the members of this branch, over which I have presided. More than that I do not ask. The press attacks on myself I care not for. I can wait for vindication; and the truth will come out in time in spite of misrepresentation and embittered prejudices."²

On July 2, 1881, the entire community was horrified by news of the murderous attack upon James A. Garfield, president of the United States, by a disappointed office-seeker, named Charles J. Guiteau. Garfield, in the four months of his administration, had

¹Senate Journal, 1881, 472, 560, 568, 572; Assembly Journal, 1881, 558, 641, 648.

²Assembly Journal, 1881, 653.

already approved himself a man of integrity and ability; and, notwithstanding the electoral vote of California was against him, he had grown rapidly in favor and was respected even by his political opponents. He had not only recommended himself to the people of the Pacific Coast by his stand on the question of Chinese immigration, and by his declaration upon accepting the nomination that "it will be the duty of congress to mitigate the evils already felt and prevent their increase by such restrictions as, without violence or injustice, will place upon a sure foundation the peace of our communities and the freedom and dignity of labor;" but he had also shown by his action that he meant and was disposed to carry out the pledges and promises he had made. The sad news of his death on September 14, 1881, cast a shadow of sorrow over the entire Union, second only to that caused by the assassination of the great Lincoln; and nowhere was the sorrow more general and sincere than among all the people of every class in California. Upon his death, the office of president of the United States devolved upon Chester A. Arthur, who had been elected on the same Republican ticket as vice-president; and the administration was carried forward on substantially the same principles and maxims with which it had been commenced. Arthur was the fourth vice-president upon whom the office of president had thus been cast; and he filled it quite as acceptably as any and much more so than two of the others.

From the end of the extra session of 1881 to the beginning of 1883, there was to be no meeting of the legislature; and the state got along very well on what had already been done towards putting the new constitution into operation, explaining its meaning, remedying as far as possible its defects and harmonizing the laws with its provisions. At the beginning of 1883, when the legislature of that year met and the officers elected at the previous state election entered upon their offices, Perkins was afforded an opportunity, through his last message, to review what had taken place during the previous two years and the results. He presented the document on January 9, 1883. He dilated in it upon the auspicious opening of the new year, the success that had attended business of all kinds, the abundant harvests, the ample yield of orchards and vineyards, the undiminished product of

the mines and the increasing activity of mechanical industries. In illustration of the general progress, he cited the fact that in 1875 the export of wine amounted to only a little over one million gallons and of brandy a little over forty-two thousand gallons, while in 1881 it had risen to nearly three million gallons of wine and two hundred and ten thousand gallons of brandy. He stated the assessed value of taxable property in the state to be at that time about six hundred millions of dollars; the interest-bearing debt, most of it in school bonds, being a little over three and a half millions. He said that in the ten years previous, over four millions had been expended in public buildings; four and a half millions for charities, and twelve millions for public education; and that within fifteen years the expenditures for educational purposes had increased from an annual average of two hundred and seventy-five thousand to upwards of two millions. The expenditures of his own administration had amounted to nearly four and a quarter millions annually, while the annual average for five years preceding was only a little over three millions six hundred thousand; but the reasons for this increase were to be attributed to the extraordinary expenses occasioned by the new constitution, the natural growth of the state and the old debts that had been left for him to pay up; and in the same connection he congratulated himself upon paying two hundred and eighteen thousand dollars of deficiencies due when he was sworn in, and upon leaving nothing of the kind to be provided for by his successor. He also called attention to the fact that the directors of the state prison had returned twenty-five thousand dollars, and those of the Stockton insane asylum and of the state normal school, each one thousand dollars, of unexpended appropriations; and said there had been "no similar record in the fiscal history of the state." He took pride in announcing that the state prisons during his administration had been rendered substantially self-supporting; that the jute-mill established at San Quentin was a success, and the grain sacks manufactured there superior to those imported; and he hoped that in the next and following years there would be no necessity of further appropriations for state prison purposes. As to the drainage or débris act of 1880, which had been pro-

nounced invalid by the supreme court, he said that it had received his signature in response to an almost universal demand of the people in the mountains engaged in placer mining and of the farmers in the valleys affected by the flow of the detritus. In reference to the new constitution, he had some remarks to make about its operation in respect to tax assessments, indicating—though he did not intend his remarks to be taken in that light—the great temporary disturbance it had caused and how rapidly matters were coming back to their old and more reasonable basis. He said that in 1880, immediately after its adoption, the assessed value of taxable property in the state, exclusive of railroads, was returned at upwards of one hundred and three millions of dollars more than in 1879; but that in 1881 it had dropped upwards of thirty-seven millions less than in 1880, and in 1882 nearly nineteen millions less than in 1881.

In further remarks upon the operation of the new constitution and especially in regard to tax matters and in reference to the state board of equalization, though he did not directly recommend amendments, he plainly indicated that they might be in order. And in conclusion, as to the most important topics adverted to by him, he appended a list, as required by law, of the instances in which he had exercised the pardoning power. It appeared that since December 20, 1880, he had granted the very large number of eighty-two pardons from state prisons, fifty-six from county jails, and ninety-one commutations of sentence. He admitted that the list might appear long; but he pleaded the great responsibilities, which had weighed upon him, and said that in every instance he had been actuated by a sense of justice to both state and criminal; and he felt satisfied his action would be approved.¹

¹ Appendix to Legislative Journals, 1883.

CHAPTER XIII.

STONEMAN.

THE new constitution, as has been already shown, provided that the terms of state officers in general, not including the justices of the supreme court and judges of the superior courts who were to hold for longer periods, should be for four years—except those elected in 1879 should hold for only three years. Former gubernatorial elections had all taken place in odd years. The object of the change seems to have been to make the elections for governors and state officers in general take place in the even years not bissextile, or in the even years when there was no election for president and vice-president of the United States. The first of these even-year gubernatorial elections was to take place in November, 1882; and in anticipation of it the political parties began to stir early. The Democratic state convention met at San José on June 20 and nominated a ticket with George Stoneman for governor and John Daggett for lieutenant-governor. The Republicans met at Sacramento on August 30 and nominated Morris M. Estee for governor and Alvah R. Conklin for lieutenant-governor. The Prohibitionists, at San Francisco on July 11, nominated Richard H. McDonald and William Sims; and the Greenback Labor party, at San Francisco on September 6, Thomas J. McQuiddy and W. J. Sweasey, for the same offices. The election, held on November 7, 1882, resulted in the triumph of the Democrats by an average vote of about eighty-seven thousand to seventy-four thousand for the Republicans; but Stoneman for governor had ninety thousand six hundred and ninety-four to sixty-seven thousand one hundred and seventy-five for Estee, fifty-seven hundred and seventy-two for McDonald and a thousand and twenty for McQuiddy. The

Democrats elected also John R. Glasscock, William S. Rosecrans, James H. Budd, Barclay Henley and P. B. Tully as congressmen, a full set of railroad commissioners and two out of three of the state board of equalization.¹

George Stoneman was born at Busti, Chautauqua county, New York, on August 8, 1822. He attended the Jamestown academy, and at the age of twenty was sent to the United States military academy at West Point, where he graduated with high honor on July 1, 1846. Upon graduation, he was promoted to the rank of brevet second-lieutenant, first dragoons, United States army, and stationed at Fort Leavenworth in Kansas. In the course of the Mexican war, he was ordered to California—to act as assistant quartermaster of the Mormon battalion—and arrived at San Diego, after a long and arduous march with a wagon-train overland, on January 30, 1847. In 1848 and 1849 he was in command of the San Francisco presidio; and he continued to serve on the Pacific coast until March, 1855. Being about that time appointed captain in the second cavalry, he reported at Jefferson barracks, Missouri, to join his company, and proceeded thence to Camp Cooper, Texas, where he performed frontier duty. In 1859, after a leave of absence of eighteen months, he resumed active service and was stationed on the Mexican boundary. At the breaking out of the war of the rebellion, being at Washington, he aided in the defense of the capital as major of the first cavalry and afterwards as a member of Major-General McClellan's staff. On August 13, 1861, he became brigadier-general of United States volunteers and chief of cavalry. He fought through the so-called peninsular campaign; in November, 1862, became major-general of volunteers, and fought in the campaign on the Rappahannock; in 1863, for gallant and meritorious service before Fredericksburg, was made brevet-colonel in the regular army; in the early part of 1864 was in command of an infantry corps in the eastern part of Tennessee, and in March of that year promoted to the lieutenant-colonelcy of the third cavalry. On July 31, 1864, in a raid upon Macon and Andersonville, he was taken prisoner but was released in October and, resuming active warfare, rendered gallant and meritorious service in many of the fights that took

¹Senate Journal, 1883, 10; Davis' Political Conventions, 431-453.

place in southwestern Virginia, eastern Tennessee and western North Carolina; for all which he was promoted to the rank, first of brevet brigadier-general and next to that of brevet major-general of the United States army. As commander in that region of most important operations, he contributed materially to the triumph of the Union arms and the successful close of the war. After the surrender of the confederacy, he was engaged as commander in the military department of Tennessee and Virginia; superintended the mustering out of volunteer troops, and aided in the restoration of peace under the reconstruction acts of congress. In 1870 he was placed by President Grant in command of the department of Arizona, where he remained a year; in August, 1871, he retired from military service, and soon afterwards established his home among the orange groves of San Gabriel, Los Angeles county, California. While there, he was appointed by President Hayes a member of the board of United States Indian commissioners, and afterwards by Governor Irwin a commissioner of transportation, under the act of April 3, 1876 to regulate freights and fares and prevent extortion and discrimination on railroads. In 1879, at the first election under the new constitution, he was chosen one of the three railroad commissioners provided for by that instrument, which office he filled when he was elected governor and continued to fill up to the expiration of his term of three years.

By that time, the railroad question had assumed very great and, as was thought by many, overshadowing proportions. The Central Pacific managers, after establishing their road by the so-called central route, turned their attention to the southern route. They had already, in anticipation of building on that line and thus forestalling and preventing competition in that quarter, organized a new corporation, called the Southern Pacific Railroad Company, which was intended, either by itself or in connection with other companies that would not interfere with its control of its own part of the line, to make a new transcontinental connection near the southern boundary of the United States. On July 27, 1866, after the organization of this Californian company, congress passed an act incorporating the Atlantic and Pacific Railroad Company, designed to run an overland road from

Springfield in Missouri, by the way of Canadian river, Albuquerque and Agua Fria, to the head-waters of the Colorado Chiquito; from there as nearly as practicable along the thirty-fifth parallel of latitude to the Colorado river, and thence to the Pacific. It was granted a right of way for one hundred feet on each side of its line, together with necessary station, depot, side-track and shop grounds and the right to take stone, timber and earth for construction within its right of way. It was also given every alternate odd section of public land along its line for forty miles on each side in the territories, and for twenty miles on each side in the states, with a right to select lieu lands in case the lands along the line could not be taken. There was no money to be given or bonds to be secured; there had to be one million dollars of stock subscribed and ten per cent paid in within two years, and the work of construction was to commence within the same period; advance thereafter not less than fifty miles each year, and be completed on or before July 4, 1878. At the same time, the act recognized the existence of the Southern Pacific Railroad Company of California and provided that it might connect with the Atlantic and Pacific line near the boundary line of California and that it should have similar grants of lands and be subject to like conditions.¹ The time of commencement of construction was subsequently specially lengthened in favor of the California company. Afterwards on March 3, 1871, congress passed another act organizing and incorporating the Texas Pacific Railroad Company, which was designed to run from Marshall, Harrison county, Texas, to El Paso; thence through New Mexico and Arizona by the most direct and eligible route to the Colorado river at or near the southeastern corner of California, and thence to San Diego. It gave a right of way for two hundred feet on each side of the line and the same kind of land grant which had been given to the Atlantic and Pacific. In addition, it was given special authority to issue construction and land bonds, and was required to be completed in five years. And, as in the former case, the Southern Pacific Railroad Company of California was authorized to connect with it from Tehachapi.²

¹ U. S. Stats. 1865-6, 292-299.

² U. S. Stats. 1870-1, 573-579.

Notwithstanding the want of the magnificent subsidy given to the Central Pacific Railroad Company, the Southern Pacific Railroad Company proceeded to build its line from Lathrop southward through Fresno, Tehachapi and Mojave to Los Angeles, and thence southeastward towards Fort Yuma on the Colorado river. On this line, the Sierra Nevada had to be passed at Tehachapi and a tunnel considerably over a mile in length constructed through the San Fernando mountains, both involving great outlay and skill; but both were carried through with success. On September 5, 1876, the line was completed between Lathrop and Indian Wells on the border of the Colorado desert, a distance of about five hundred and eighteen miles—connecting Los Angeles, which was three hundred and eighty-eight miles south of Lathrop, with San Francisco and the Central Pacific system. The junction was formed and celebrated with a spike of San Gabriel gold, driven by an orange-handled silver hammer in the hands of Charles Crocker in presence of a large and enthusiastic crowd, at Lang's station in Soledad Cañon near the eastern end of the San Fernando tunnel. In six months more the line was extended from Indian Wells across the desert to Fort Yuma on the Colorado river; and subsequently it was carried across the continent connecting with various lines as it approached the east. And it may here be added, that afterwards another line was built by the same company from Mojave to the Needles on the Colorado river, being a portion of the line provided for in the act organizing the Atlantic and Pacific Company; and in the other direction, a line was pushed up to the northern boundary of the state, which connected with an Oregon line and formed connections with northern transcontinental roads.

In the meanwhile the Southern Pacific Railroad Company, which was composed of the same members as the Central Pacific Railroad Company, adopted much the same plan of absorbing all the small lines coming or likely to come in competition with it, as had been the policy and practice of the other company. Regarded as one great institution, under whatever name it might be called—and it finally came to carry on its business chiefly under the name of the "Southern Pacific Company," a Kentucky corporation organized under a special act of that state

in 1884—it was growing to immense proportions and in the very nature of things exercising wide-spread influence in almost every direction. In the conduct of its business, its managers looked out for their own interests; and as these interests, at least in the light in which they regarded them, often conflicted with those of others; and particularly as it began to be understood what immense fortunes had been made out of the bonds and lands, which the government had lavishly thrown into their laps, much ill-will was excited; and the railroad and its directors became exceedingly unpopular, as has been seen manifested by the numerous attacks upon it and them from year to year in the legislature as well as in almost limitless newspaper articles and public harangues. It was this hostile feeling, increased and intensified by charges against the railroad managers of interfering in politics, corrupting legislators and judges and monopolizing and tyrannizing over all branches of business and affairs in general, that led to the legislative efforts to regulate freights and fares, the appointment of commissioners of transportation, and finally to the organization of the railroad commissioners by the new constitution, already referred to. As one of such railroad commissioners, Stoneman almost from the start assumed a position of antagonism to the other two, Joseph S. Cone and Charles J. Beerstecher, who were supposed, and apparently with reason, to manifest a decided leaning towards the railroad side. At any rate, little or nothing of importance in the way of regulating freights and fares, and nothing to the satisfaction of the community in general, was accomplished; while at the same time every disagreement—particularly when there was a quarrel and the minority of one was effectually run over by the majority of two—served to raise Stoneman in public estimation. It seemed to make no difference that he manifested no skill in the fight—and, whatever his excellence on the battle-field, he was not a success in the combat in which he was now engaged. All that the public required, however, was that he should stand up as an opponent of the railroad; and, as he did so with great persistence and without ever for a moment harboring a thought of surrender, he became a sort of popular hero; and the result was that, when taken up and run by the Democrats, being looked upon as an uncompromising enemy

of the railroad, he was not only elected, but the popular favor with which he was regarded helped to elect the rest of the Democratic ticket.

Stoneman's inauguration as governor took place on January 10, 1883. In his inaugural remarks, after referring to the generally prosperous condition of public affairs, he turned his attention to recent political contests and said that several important problems had been solved by them. One was that corrupt combinations of men for advancing the selfish interests of particular persons and factions could not override the popular will; another, that the interference of federal authority in the local affairs of the south would not be tolerated; and still another, that the assessment of federal office-holders and employees to raise corruption funds would not avail. The result was to give renewed confidence to the advocates of popular elections, and to strengthen faith in the incorruptibility of the people. He expressed himself in favor of giving force and efficacy to the board of equalization, which had been shorn of its powers by the supreme court; and in the same connection he said that several great corporations, referring to the railroad companies, had refused to pay their taxes; and he recommended that the whole power of the state should be exerted in compelling them to bear their just proportion of the public burdens. To permit them any longer to escape would be to admit that the state had fostered a servant who had "grown into an insolent and tyrannical master." The subject of freights and fares and prevention of discriminations had for years occupied much attention; the demand for their regulation had been universal, and a special commission had been chosen under the new organic law to carry out and execute the popular will. But so far, the railroad commission had entirely neglected and refused to take any positive steps towards enforcing the powers conferred upon it by the constitution and the laws; and all hope of relief from it had had to be deferred. It was to be hoped that the incoming commission would be composed of men of sufficient courage and sagacity to properly meet and solve the questions involved, which constituted the great living issue of the day; and he promised all the power and influ-

ence of the executive department to bring it to a final and satisfactory termination.

He took a positive and decided stand against the "Sunday law" as an enactment that was opposed to democratic teachings and found no support among liberal-minded people. Under various forms, such a law had been on the statute-book for nearly a quarter of a century; and now and then spasmodic efforts had been made to enforce it. But all these efforts had been without success. In every contest before the courts, the condition of public opinion had been shown by the fact that the law itself and not the defendant charged with infringing it had been on trial. Even when the testimony of infringement had been conclusive, juries had almost uniformly refused to convict—a condition of affairs not observed with reference to any other portion of the criminal jurisprudence. He deemed it unwise to encumber the penal code any longer with a provision that could not be enforced, and in effect recommended its repeal. He called attention to the fact that the legislature would be called upon to re-apportion the state into congressional, senatorial and assembly districts and expressed a hope that it would not be done in a partisan spirit, as had been too often the case. He congratulated the people on the relief afforded by congress against "the much deplored evil of Chinese immigration," though at the same time he thought "it might justly and properly have extended much farther." He adverted to a number of subjects upon which it would be necessary under the new constitution to legislate, such as a general road law, laws establishing a system of county government, and laws providing for the incorporation and government of cities and towns, which should be uniform throughout the state. In reference to the state prisons, he thought that a system of isolation and solitary confinement should be instituted for the most vicious convicts; and he recommended that all prisoners should in the first place be sent to San Quentin; that they should then be graded by the state prison directors, and that the most hardened should be sent to the Folsom or other prison that might be established for such severer punishment as might be adopted. In other words, he proposed that San Quentin should be a distributing prison, to which all commitments should be made, and

where complete records in all cases should be kept, and that all the other prisons should be subordinate branches. He also invited earnest attention to the subject of irrigation and the necessity of providing for the protection and regulation of the use of water—a matter which had proved one of the most difficult to deal with in legislation. In conclusion, he recommended the strictest economy; the guarding against the creation of new offices or commissions, and the abolition of any useless ones that might be in existence. "To lighten the burdens of taxation, to reduce the expenses to the lowest possible standard, to allow the largest personal liberty consistent with the general welfare, not to govern except where government is necessary, to administer the law evenly and impartially on all classes and interests—these," said he, "are my ideas of the requirements of the day and of the true theory of our form of government."¹

One of the first matters of special importance and interest that came up in the senate of 1883 was a question of confirming appointments. Governor Perkins at the end of 1880 had named N. Green Curtis as a regent of the university of California; but the senate of 1881, on account principally of Curtis' prominent advocacy of the confederacy during the civil war, refused to confirm him. Upon this, Perkins sent in an extraordinary special message to the effect that he supposed the senate had been laboring under "some misunderstanding as to the gentleman named," and renominating him. The senate again rejected him. Subsequently, Perkins nominated N. Green Curtis for the third time and also Isaias W. Hellman and Leland Stanford as regents of the university, as well as a few other officers; and it was these names that now came up for confirmation. They were all refused confirmation; and, after considerable discussion as to the effect of an unconfirmed appointment by the governor, Curtis and Hellman, who had been acting in the meanwhile as regents, resigned their offices, and Stanford's name was withdrawn by request.² Though such a rejection of a prominent Republican by a Democratic senate or of a prominent Democrat by a Republican senate was not unusual and was almost invariably accepted

¹ *Appendix to Legislative Journals*, 1883.

² *Senate Journal*, 1881, 18, 40, 58, 78; 1883, 39-41, 249, 256.

with graceful submission to the dominant party, it was said that Stanford felt greatly chagrined; and, according to some accounts, it was partly for that reason that he determined to build and endow a university of his own. Though there may have been no truth in these rumors, it is certain that soon afterwards he commenced making arrangements for his magnificent institution, called the "Leland Stanford Jr. University" at Palo Alto in Santa Clara county, which in a few years became, if not a rival of the state university at Berkeley, a twin seat of learning; and it was thus that California acquired the proud distinction, not only of having done more and better for education than any other state of its years in the Union, but also of having two of the highest-grade educational institutions in the United States.

The next matter of interest was an act for the repeal of the so-called "Sunday law." It was the first bill offered in the senate and passed that body by a vote of twenty-two ayes to nine noes. In the assembly it passed by a vote of forty-seven ayes to twenty-one noes.¹ At this session were also passed important acts—which either could not be reached or had failed at the previous sessions under the new constitution—concerning roads and highways; the improvement of streets; the classification of municipal corporations; the organization, incorporation and government of municipal corporations; the establishment of a uniform system of county and township governments; and the apportionment of the state into congressional, senatorial and assembly districts.² At this session also was passed an act establishing a state board of horticulture, which in the course of a few years and especially under the presidency of Ellwood Cooper, an enthusiastic fruit-grower of Santa Barbara county, accomplished great and lasting good to the state. The ready recognition and acceptance, by this board, of the discovery, by Albert Kœberle, of Australian insects that destroy most of the fruit-tree pests, and the importation and dissemination by it of these insects, have not only already been of incalculable benefit, but have suggested the plan and opened the way for further activity in the same and cognate directions, the importance and value of which are beyond estimation. In

¹Senate Journal, 1883, 60; Assembly Journal, 1883, 239.

²Stats. 1883, 5, 24, 32, 58, 85, 93, 296, 299.

the same line, though not attended with the same success as a state institution, was an act to establish a board of silk culture. Another act of this session, which seems, however, to have been unnecessary, or at least has not accomplished the good expected of it, was for the establishment and support of a bureau of labor statistics.¹

A resolution was introduced in the assembly, early in the session, to investigate the affairs of the railroad commissioners who had just gone out of office. An attempt to table it having been defeated by a vote of sixty-nine to seven, the resolution was unanimously adopted, and the subject referred to the committee on corporations, which reported towards the end of the session. It in substance found that the commissioners, Stoneman, Cone and Beerstecher, had not properly attended to their duties but carried on other business; that Stoneman did not make anything out of the office; that Cone, though wealthy before, had received deeds for large tracts of land from the railroad company while in office—intimating that he must have been afforded extra facilities in procuring them—and that Beerstecher had gone into office poor and come out comparatively rich. It also found that Stoneman had made an attempt to accomplish something in the way of regulating freights and fares, but had been defeated by his colleagues; and that Cone shortly before the end of his term, but so late that nothing could be accomplished, had also made a similar attempt. It declared in effect that no good had been done by the commission and asked that the testimony taken on the investigation should be published, which was accordingly ordered. Whatever may be said of the unfriendliness of the committee to Cone and Beerstecher and its manner of handling the subject, there can be no doubt that the railroad commission was so far not a success; and that neither of these two commissioners gained any credit with the people for the manner in which he had filled the office.²

It can not be truthfully said that office-holders during the previous administration were worse than ordinary, or that they were not better than had been the case in many former administra-

¹ Stats. 1883, 27, 289, 369.

² Assembly Journal, 1883, 33, 449.

tions; but it is certain that in this session of 1883, and particularly in the assembly, there was a more than common disposition to make and entertain accusations. In addition to the railroad commission, the state prison management received its attention; and a minority report was made, charging loose and negligent conduct by the warden; but, if there was any evidence to sustain the allegation, it did not appear.¹ It is certain that Governor Perkins' prediction that there would be no further need of appropriations for the state prisons was not realized. Among other matters of inquiry, instituted in the assembly, was one against Judge Marcus P. Wiggin. This officer held under an act which had been passed in 1880 for an additional judge of the superior court of Mono county. Several charges of misconduct were made against him; and an investigation resulted in a report that he should be removed from office. Wiggin replied and defended himself with spirit; but it made no difference. An impeachment was moved and for a while there seemed a likelihood of a long and costly trial. But before matters went further, the charges were withdrawn and Wiggin resigned his office. And about the same time, the act of 1880, providing for an additional judge of Mono county, was repealed.²

The women's rights advocates continued their storming of the halls of legislation, but failed to accomplish anything except to keep up the agitation. One of them asked for the passage of an act "to declare and protect the identity of married women." Her object seems to have been "to recognize a married woman as an individual and not the slave of her husband." It is possible, and indeed probable, that by identity she meant individuality; but under any circumstances she appears to have had little idea of what she was seeking; and, instead of accomplishing anything, she was simply affording another instance, too common in the controversies about women's rights, of a good cause injured by poor advocacy.³ Another project offered at this session was a bill to provide what was fondly called "a simple, speedy and inexpen-

¹ Assembly Journal, 1883, 432, 581; Senate Journal, 1883, 272, 277, 346.

² Stats. 1880, 99; Assembly Journal, 1883, 274, 449, 594, 627, 641, 645; Stats. 1883, 62.

³ Assembly Journal, 1883, 611.

sive system of procedure in civil cases." Its author's idea seems to have been to do away with all the learning of the law, and accomplish for jurisprudence what some unbalanced minds have proposed for government by returning to a state of nature. He appears to have good-naturedly admitted that all other lawyers would differ from him; but he maintained that "the opinion of a single reputable attorney, condemnatory of the existing system and recommendatory of that proposed by the bill under consideration, should have more weight than the combined testimony of all other attorneys to the contrary." But, like many other reforms so exceedingly far ahead of the comprehension and appreciation of contemporaries, it got no further than introduction and died of immaturity.¹ As, however, no such bills passed the houses, Stoneman had little or no occasion to exercise the veto power. He in fact used it on very few occasions. In one instance he disapproved a bill because an identical act had already been approved; in another instance he vetoed a bill appropriating money to purchase trails in Yosemite valley on the ground that enough money had already been appropriated for that purpose; and in still another instance he struck from the general appropriation bill an item of nine thousand dollars, for contingent expenses of the controller's office, on the ground that only two hundred dollars had been asked for; and all these vetoes were, almost as a matter of course, sustained.²

Scarcely had the legislature adjourned, when railroad matters again became the subject of attention. The new railroad commissioners—Gideon J. Carpenter, William P. Humphreys and William W. Foote—had taken office in January, 1883; but it soon became manifest that they were inharmonious and that nothing satisfactory to public expectation would be accomplished. Carpenter and Humphreys seemed to agree, but did nothing; while Foote, like Stoneman in the previous commission, was in opposition. Being, however, a man of combative nature and much oratorical force, instead of merely making his objections and resting on them like Stoneman, he kept up a regular fusilade of hot shot, which if it accomplished nothing else rendered the position of his

¹Assembly Journal, 1883, 224, 265; Senate Journal, 1883, 248.

²Senate Journal, 1883, 407, 413; Assembly Journal, 1883, 628.

colleagues uncomfortable and added to the popular inflammation. This continued growing until, in the early part of 1884, an unexpected and unusual event occurred which roused the administration and caused a sort of political explosion. After the adoption of the new constitution and the lodgment by it of the power of assessing railroads in the state board of equalization—or in other words for a period of four years—the principal railroads had refused to pay the taxes levied against them. The result was a number of suits, some by the state and some by counties, against the delinquents for not only the taxes but also for the interest and penalties prescribed by law, which amounted at that time to a very large sum. The most important of these suits had been brought in the United States circuit court in San Francisco, then held by Judge Lorenzo Sawyer, and were under the control, so far as the prosecution was concerned, of Edward C. Marshall, the state attorney-general. The general expectation was a judgment, in favor of the state and counties plaintiff, for the full amount claimed; when all at once it became known that Marshall had compromised the cases, by releasing the interest and penalties and accepting the simple amount of the taxes. He claimed, and assumed, the right as attorney-general to act according to his own judgment and will; and, according to his declaration, he had made an advantageous settlement. But the administration and the public generally and, as it afterwards appeared, the Democratic party, which had elected him, were of a very different opinion; and when the facts became known great excitement prevailed.

Stoneman, regarding the honor of the state involved and the situation critical, determined to at once call an extra session of the legislature, and accordingly on March 5 issued a proclamation for that purpose, fixing the time of meeting for March 24, 1884. In this document, he said the tax suits had under various pretexts been delayed and were at last terminated by proceedings, which practically established that, while nothing was collectible from the railroad companies, yet the state was willing to accept whatever they saw fit to pay. The humiliating attitude, in which the state was thus placed, should fill the heart of every public-spirited citizen with regret and mortification; whilst the disturbance of

the financial system of the country, by the repeated and persistent delinquency of these companies, no wise man should willingly permit to continue. The condition of affairs also demanded a change with reference to the regulation of the business of transportation companies. The plan of electing railroad commissioners from districts had not given satisfaction; a wide-spread discontent existed on account of failure to adjust a tariff of freights and fares; and, if the results so long hoped for from the commission were ever to be attained, it would have to be through a revision of the constitution and laws upon the subject. He, therefore, regarding the occasion as extraordinary, called the legislative bodies in extra session, to submit to them six amendments to the constitution relating to railroad commissioners and their election from the state at large, to railroad taxes and to freights and fares; also laws for the assessment and collection of income taxes from railroads and other corporations; laws relating to revenue in general; laws for the sale of railroad property for delinquent taxes; laws to prevent the ratification of any compromise or judgment by consent in any tax case, by which a less amount had been or was to be received than the sum due by law or claimed in the complaint for tax, interest and penalty; laws more clearly defining the duties and powers of the attorney-general, district attorney and boards of supervisors in reference to the collection of delinquent taxes, and laws for the prosecution of and punishment for discriminations and abuses in railroad transportation.¹

The legislature accordingly met on Monday, March 24, 1884. As soon as the houses organized, Stoneman sent in a message asking their assistance in proposing such constitutional amendments and passing such laws as would prevent a recurrence of the condition of affairs then existing in reference to railroad matters; also in devising means to assert the rights of the state in reference to the further prosecution of the tax suits and providing for opening and setting aside all compromises, consent-judgments and agreements by which the state had lost or was about to lose any portion of the taxes, penalties or interest due to it. He then enlarged upon the subjects for which he had called them together, and pointed out the way in which he con-

¹ Senate Journal, Extra Session, 1884, 1.

ceived the desired objects might be attained. In response to these recommendations, and in apparent accordance with them, there were introduced in the senate thirty-two bills, nineteen of them to amend the constitution, and in the assembly sixty-three bills, twenty-seven of them to amend the constitution. But it soon became apparent that nothing of importance in the direction pointed out by Stoneman was going to be accomplished. This was particularly evident in the senate, where the Republicans joined with the Democrats in electing Democratic officers by a unanimous vote. Whatever other object they may have had in this, it soon began to be suspected that they were looking forward to the contest for the next United States senatorship, which was to be decided by the legislature of 1885. It was generally understood that Aaron A. Sargent, who had been United States senator from 1873 to 1879, was to be the Republican candidate for the office and that the railroad companies, on account of his very great services to them, were to support him with all their power, as they had favored him before. But it seems that Leland Stanford, the president of the railroad companies, had also fixed his eye upon that office for himself; and his desire had begun to make itself felt. The first decided indication of the fact and of the undercurrent in his favor, or at least against Sargent, was a remarkable vote in the early part of this extra session. A short time previous, Sargent, who had been appointed United States minister to the court of Berlin by President Arthur, had become involved in a controversy with the German officials in reference to the importation into Germany of American pork; and, being an outspoken man of very decided views, he had advocated the American side of the question with perhaps more heat than those courtiers were accustomed to. Under the circumstances, fault being found by the German court and the newspapers having taken the subject up, Charles W. Cross, senator from Nevada county, a personal friend of Sargent, offered a resolution declaring that the senate approved Sargent's course in upholding the interests of American products at the court of Berlin, and was proud that the independent spirit of a Californian had dared to assert itself even at the court of the German empire. A motion being made to table and in effect kill the resolution,

the vote showed twenty-two ayes to thirteen noes; and among the ayes were several Republicans, who afterwards acted as special advocates of Stanford's candidacy against Sargent.¹

In the meantime, while the senate was doing comparatively nothing—it in fact passed only one senate bill—the assembly was actively engaged in its work and passed nineteen assembly bills and several important resolutions, which were supposed to cover the objects for which they had been specially called together. Three of these were propositions to amend the constitution in reference to the railroad commission and railroad regulation and taxation, and the others chiefly to amend the laws in reference to the same subjects. These, as soon as passed, were sent to the senate, which wrangled over them and passed four, one of which was to provide for funding the indebtedness of counties in certain cases, one to provide for taxes upon the income of railroad corporations which failed to pay property taxes, and two making appropriations to pay the expenses of the extra session. Among the resolutions adopted by the assembly were a series, usually called the “Wallace resolutions,” declaring that the railroad companies held their roads and franchises—paid for by public money and land—only as and for a public use and not as their private property; that their management of them—only for corporate gain and emolument—was a flagrant breach of public trust; that the railroads were subject to legislative control, which however should be exercised not oppressively but in a spirit of justice, and that the decision of the United States circuit court, that the power to impose taxes on railroad property was limited to the same rules as the power to tax the property of private persons, was in effect an assumption that railroad property was private property and involved a grave judicial and political heresy, alarming in its consequences and tending to subvert the rightful authority of the state and people over railway properties.²

Another step, taken by the assembly in the railroad controversy, was the adoption of the report of a portion of the judiciary committee to the effect that the state was entitled to recover penalties, interest and counsel fees in the railroad suits; that the attorney-

¹ Senate Journal, Extra Session, 1884, 38.

² Assembly Journal, Extra Session, 1884, 22, 37.

general had no authority to waive them; that he intended to waive the rights of the state and had done so as far as he could, but that the state might be restored to its former position by setting aside and annulling his unauthorized acts; that, as the record then stood, the question of the rights of the state was not open to review on appeal; that the conduct and management of the attorney-general was not such as to best enforce and guard the rights of the state and counties, and that steps ought to be taken to set aside the proceedings on the stipulations entered into by that functionary. The vote on the adoption of this report was forty-seven ayes to sixteen noes; and the next day a motion disclaiming "all intention of imputing motives of corruption or personal dishonesty in the attorney-general in his official action" was tabled by a vote of thirty-two ayes to twenty-eight noes.¹ But, as the senate would not or at least did not assist in the work contemplated by Stoneman, little or nothing in the direction pointed out by him was done. The subjects involved and the motives governing members, however, received fuller public discussion than would otherwise have been the case. As a specimen of the expressions of public opinion, the Stockton Herald of April 29, 1884, charged David McClure, a Republican senator from San Francisco, with declaring that with seven Republicans and fourteen Democrats he would obstruct and prevent any legislation. He himself called attention to the charge and said that he had taken no part in the debate mentioned by the newspaper and could not possibly have made the statement imputed to him.² But the fact remains, that legislation was obstructed and prevented.

Among the bills, passed by the assembly and sent to the senate, was one to prevent discriminations and abuses of railroad companies, commonly known as the "Barry bill." It had passed the assembly by a vote of seventy-two ayes to two noes; but, when it reached the senate, it was so amended as to make it very different from the original; and as so amended it was passed by a unanimous vote. In the long wrangles over it, there was on several occasions a tie; and in every such instance Lieutenant-

¹ Assembly Journal, Extra Session, 1884, 140-143, 178, 179.

² Senate Journal, Extra Session, 1884, 71.

governor Daggett gave his casting vote against the bill as it originally stood. It was then sent back to the assembly, which concurred in a few of the amendments but refused to concur in the most important of them and returned the bill to the senate with a request that it should recede from all amendments not concurred in; but the majority of that body, as was to be expected, declined to recede and finally indefinitely postponed further consideration of it. Another bill in relation to the powers and duties of county boards of equalization, having the same general objects in view, which passed the assembly by a vote of fifty-nine ayes to five noes, was placed on file in the senate, and there it remained. It may be added that among the concurrent resolutions adopted, were one against the acquisition of large landed estates in the United States, and one relative to making August 29, 1884, the centennial anniversary of the burial of Junipero Serra, the great founder of the missions in California, a legal holiday as a tribute of respect to his memory—and in accordance with the latter the governor afterwards directed that day to be so observed.¹

Meanwhile the presidential campaign was approaching. Already on April 30, the Republican convention to select delegates to attend the Republican national convention, which was to convene at Chicago on June 4, had met at Oakland; adopted a platform, the main characteristic of which was favoring James G. Blaine for the presidency, and elected twelve delegates. On June 10, the Democratic convention was held at Stockton and, besides selecting delegates to the Democratic national convention to be held in Chicago on July 8, adopted a platform, the chief clauses of which were denunciations against "certain Democratic officers and legislators, who co-operated with the Republicans at the late extra session in frustrating the will of the people and antagonizing the true interests of the state," and specially naming among such officers Railroad-commissioners Carpenter and Humphreys, Lieutenant-governor Daggett and Attorney-general Marshall. It also named Samuel J. Tilden and Thomas A. Hendricks as the choice of the Democracy of California for president

¹ Assembly Journal, Extra Session, 1884, 15, 45, 80, 81, 156, 180, 181-184, 187, 205; Senate Journal, Extra Session, 1884, 51-81, 111, 112, 124, 125.

and vice-president of the United States, with Allen G. Thurman as second choice for president, and repudiating the aspirations of Stephen J. Field for that office. On June 17, the Prohibition party held a convention at San Francisco; nominated delegates to attend a Prohibition national convention to be held at Pittsburg on July 23 and adopted a platform against the manufacture, sale and use of alcoholic drinks as the greatest evil of the country and the age. A convention, consisting of delegates from what called themselves the National Anti-Monopoly, Greenback, Labor and National Union parties, also convened at San Francisco on May 23 and indorsed the nominations of Benjamin F. Butler and A. M. West for president and vice-president. The national conventions, to which delegates were thus elected, chose as their candidates—the Republicans, James G. Blaine and John A. Logan; the Democrats, Grover Cleveland and Thomas A. Hendricks; the Prohibitionists, John P. St. John and William Daniels, and the Greenback Anti-Monopolists, Benjamin F. Butler and A. M. West. Each of the parties nominated presidential electors; and the result of the election, held on November 4, 1884, was an average vote for Blaine of one hundred and two thousand four hundred and six; for Cleveland eighty-nine thousand two hundred and twenty-five; for St. John two thousand nine hundred and sixty, and for Butler two thousand and ten. California's vote for Blaine, however, like its previous vote for Hancock, was not sufficient to make a majority in the electoral college; and Cleveland and Hendricks were declared chosen.¹ At the same election, the different parties put into nomination candidates for twenty senators from odd-numbered districts and eighty assemblymen; and a large majority of those on the Republican ticket headed by Blaine, being elected, made the new senate, with the old hold-over members, almost equally divided between Democrats and Republicans, and the new assembly very preponderatingly Republican.

The legislature of 1885, thus constituted, met on January 5. In the senate, a long contest occurred in reference to a president pro tempore, which after one hundred and eighty-four ballots was decided on January 16 by twenty-one votes in favor of

¹ Davis' Political Conventions, 454-473.

Benjamin Knight. In the assembly, William H. Parks was elected speaker by fifty-seven out of seventy-five votes. Directly after the completed organization of the houses on January 17, Stoneman sent in his first biennial message. He represented the condition of the state as "reasonably prosperous;" there was abundant production but unsatisfactory prices; warehouses were filled with wool, wine and cereals, which were awaiting increase in rates; and fructifying rains assured bountiful harvests and a revival of the mining industry for the coming year. He said that the expenses of the state were not so high as they had been—those of 1883 and 1884 being nearly a million and a quarter dollars less than those of 1881 and 1882; while the receipts were only about three hundred and eighty thousand dollars less than in the previous two years. At the same time, the rate of taxation had steadily decreased from sixty-five and a half cents per hundred dollars valuation in 1881 to fifty-nine and a half in 1882; forty-nine and seven-tenths in 1883, and forty-five and a fifth in 1884—the lowest recorded in the history of the state government. He further said that, according to the report of the controller, the state had lost in various state offices, including those of the San Francisco harbor-commissioners, the commissioner of immigration, the secretary of state and clerk of the supreme court, the sum of one hundred and sixty-seven and a half thousand dollars, of which C. P. Bunker, a former commissioner of immigration, had paid in, after judgment, a little over twenty thousand dollars, and John W. McCarthy, a former clerk of the supreme court, a little over twenty-one hundred dollars in full of his delinquencies.

He called attention to the fact that at the last election amendments to the constitution had been adopted relative to the compiling, printing, publishing and distributing of text-books for the use of common schools, and stated that it would involve a cost of one hundred and fifteen thousand dollars, after the copy of such books had been furnished by the state board of education. He recommended the encouragement of the state boards of horticulture and viticulture, and suggested that, as the United States government had practically abandoned the fish-supply business, the state should take it up and have state hatcheries.

He also recommended the continuance of the state mining bureau, and in the same connection stated the mining product in 1883 to have been of the value of fourteen million one hundred and twenty thousand dollars—nearly one-half of all produced in all the states of the Union and more than one-sixth of all produced in the world. He likewise favored the permanent continuance of the state engineer department, and in connection with the subject said that the doctrine of riparian rights, as decided by the supreme court of the state, stood in the way of the proper development of the country; that there was a necessity for legislation to insure the prosperity of the commonwealth in general in this respect, and that, among other things of immediate need, there should be required a title to and record of water claims as clear and indefeasible as to real estate holdings. He next adverted to the fact that in the course of the preceding two years charitable institutions, including orphan asylums, old people's and veterans' homes, had received nearly four hundred and sixteen and a half thousand dollars, and that the insane asylums at Stockton and Napa were filled to repletion. On the subject of pardons, of which he had granted one hundred from the state prison, twenty-seven from county jails and commuted thirty-five sentences, he took occasion to remark that the pardons from the state prison had in almost every case been at the recommendation of the state prison directors. It may be added that this entirely too frequent exercise of the pardoning power, instead of diminishing, increased during the remainder of his term—the number from January 1, 1885, to January 1, 1887, being one hundred and two from the state prison, thirty-one from county jails and one hundred and three commutations of sentence.

Stoneman next spoke of the railroad; but said nothing about the extra session or its failure. He reiterated that the railroad had not complied with its contracts or done anything in consideration of the interest paid by the state on fifteen hundred railroad bonds, amounting to two million one hundred thousand dollars. It had not paid its taxes, but resorted to litigation to delay and hinder the state. The amount of those taxes due for the years 1880-1, 1881-2, 1882-3 and 1883-4 was within a fraction of six hundred and thirty-two thousand dollars, which with

penalties and interest amounted to upwards of one million and forty-one thousand. He recommended, as he had recommended before, that the most stringent laws should be enacted to enforce payment, as the life of the sovereign government depended to a great extent upon its use. In addition to the suggestions thus made, he thought that little legislation would be necessary; and in conclusion he referred to the claim of Attorney-general Marshall that he had money of the state in his hands, which the state refused to receive. Marshall had said in his report, addressed to the governor, that although he felt how worse than useless any suggestions from his office, in regard to the many and pressing exigencies of the state, would be, he congratulated the administration on its success in borrowing at a high rate of interest from its own debtors money necessary to support the state prison; in exhausting the fund sacred to the education of the people, and in flooding the country with warrants upon the treasury, discounted at ruinous rates by employees of the state; while more than enough coin to meet the obligations of the state lay in his office without interest and almost without security. Stoneman, in a more seemly tone, replied in substance that the money in Marshall's hands had been received by him in compromise of the tax suits at much smaller sums than were due; that the administration was unwilling to accept such sums in satisfaction of the debt, and that even if accepted the money could not have been used as suggested by the attorney-general.¹

The first important matter that came up before the houses was the election of a United States senator for six years commencing March 4, 1885, in place of James T. Farley, whose term was to end on March 3. It came up, in accordance with law, on Tuesday, January 27. Previous thereto, the contest of Stanford against Sargent had been decided in the Republican caucus, as was perhaps to have been expected, in favor of Stanford; and, when the nominations came to be made in the respective houses, Sargent was not named. The candidates put forward were Stanford on the part of the Republicans and George Hearst on the part of the Democrats. In the senate, out of thirty-nine votes Stanford received twenty and Hearst sixteen, leaving three which

¹ I Appendix to Legislative Journals, 1885.

were thrown for other Democrats. In the assembly, Stanford got fifty-eight votes and Hearst twenty. As there was no majority in the senate, the election was carried into joint assembly, which convened the next day, where there were one hundred and nineteen votes. Of these, Stanford received seventy-nine, Hearst thirty-seven, Niles Searles one, and Farley two. Very soon after the result was announced and the joint assembly dissolved, Stanford made his appearance in the senate; and an adjournment of fifteen minutes was taken for senators to be presented to him.¹ When subsequently, all the circumstances of this election and the steps that led to it came to be collated, great surprise was manifested in many quarters. For a considerable time Stanford's candidacy was unknown except to the initiated few; and it is claimed by many persons that not only Sargent but also some of Stanford's railroad colleagues did not know of it until very shortly before the final election. On the other hand, it is claimed by others that Stanford did not contemplate being a candidate until he became convinced that Sargent could not be elected, and that he then consented to accept the office so as to prevent an objectionable man from getting it. Whatever the true inside facts may have been—for they are subjects of more or less controversy and appear to have been of a kind that are not usually made public—it is certain that Sargent considered himself much injured. It also seems pretty certain that this election, more than any other that has ever occurred in the state, caused a large portion of the community to thenceforth favor the election of United States senators by direct vote of the people.

Early in the session three amendments to the constitution—the forerunners of a long list at nearly every subsequent legislature—were declared adopted. One was in reference to common school text-books, already mentioned. Of the other two, one changed the system of the new constitution in relation to street work in cities, which had been found to be entirely impracticable, and the other enlarged the powers of the state and county boards of equalization. In addition to these amendments thus declared adopted and ratified, many new ones were proposed at this session, of which one, commonly known as the "Health amendment,"

¹ Senate Journal, 1885, 151, 170-172.

consisting of amendments to four sections in relation to revenue, and especially for the taxation of railroads by a levy of two and one-half per cent per annum upon their gross receipts, was passed by a much larger vote than the requisite two-thirds of each house.¹ By this time it had become patent to nearly everybody—what had been known to the most intelligent men from the start—that the new constitution, instead of being a plain declaration of organic propositions and principles, like the admirable constitution of the United States or even approaching the dignified simplicity of the old constitution, was, in almost every one of the many respects in which it differed from its predecessor, a prolix and confused collection of provisions, many of them inefficient and ill-advised, and in scope and purport resembling an ill-drawn and ill-digested statute. Its defects have rendered its frequent amendment a necessity, and the frequency of its amendments has detracted from its authority and the respect and reverence with which the constitution of a great state ought to be regarded.

The legislation of the session included acts creating a state board of forestry; to prevent fruit-tree pests and diseases; for the endowment of the university; regulating the use of appropriated water outside of cities and towns; providing for a lien on threshing machines; regulating the practice of dentistry; facilitating the giving of bonds required by law by corporations formed for that purpose; a new street law for municipalities; establishing an industrial home of mechanical trades for the adult blind; to promote drainage; to establish a new board of silk culture; to establish and maintain a "California home for feeble-minded children," and numerous amendments to the county government act of the previous session.² In addition to these, there were a very large number of deficiency appropriation acts passed, which indicated that Stoneman, when he spoke in his message of the great decrease in the expenses of the state during his first two years, could not well have understood the real financial condition. A couple of anti-Chinese bills were presented but not passed; and it became evident, from the manner in which they were

¹ Senate Journal, 1885, 161, 163, 404-406; Assembly Journal, 1885, 343, 344.

² Stats. 1885, 10, 40, 49, 95, 109, 110, 114, 147, 166, 195, 198, 204, 216, 496.

treated, that the persecuting spirit against Asiatics, encouraged by the constitution, had by this time grown perceptibly weaker than it had been. A resolution of sympathy for certain San Francisco iron-workers on strike at the time, "for their efforts to resist the downward course of wages with its dangerous and degrading effects," was adopted by the assembly;¹ but a similar resolution introduced in the senate was indefinitely postponed.²

Among other subjects considered by the legislature of 1885, and one of the most important, was that of irrigation. This was especially so with reference to the southern and much of the central portions of the state, which without irrigation would have to forever remain to a greater or less extent a desert. Though it might be doubtful whether, under the restrictions of the new constitution, the kind of legislation proper to meet the case could be successfully carried out, an attempt was made in response to the recommendations of Stoneman's message by the assembly; but it was defeated in the senate. Speaker Parks referred to it in his valedictory address and even went so far as to pronounce it excellent.³ It does not seem very likely, however, that any legislation, short of another amendment of the constitution, would have afforded adequate relief, for the reason that the fundamental question of riparian rights remained undecided. This old common law doctrine, very excellent in England, the eastern states and some portions of California, gave to the owner of land on the bank of a stream the right to the full, undiverted flow of the stream in front of his property; and this right could not be divested by appropriation for irrigation or other purposes. Such at least was the contention of many persons; and on April 26, 1886, after long and exhaustive arguments, it was so decided by the supreme court of the state.⁴ This decision, though it was concurred in by only four of the seven justices of the supreme court, struck consternation into the ranks of the irrigationists and induced them to besiege the governor for another extra session of the legislature, in hopes of gaining thereby some relief from the riparian-rights doctrine.

¹ Assembly Journal, 1885, 306.

² Senate Journal, 1885, 307.

³ Assembly Journal, 1885, 657.

⁴ *Lux vs. Haggin*, 69 Cal. 255.

Stoneman, notwithstanding his previous extra-session experience, allowed himself to be persuaded into trying the experiment over. On July 16, 1886, accordingly, a couple of months after the decision of the supreme court, he issued his proclamation calling the legislature together again on the following July 20. The reason he gave for his hasty action was that the wide-spread disaster, which the decision threatened to the agricultural interests of the country, and the consequent general excitement and apprehension, rendered it necessary to take immediate and efficient action to prevent the injurious consequences, which would otherwise flow from the establishment of such a rule of law as had just been enunciated by the highest court of the commonwealth. He said that under the sanction of long-continued custom, which had treated the flowing waters of the state as public property and dedicated them to common use, a splendid system of irrigation had grown up. For years it had been allowed, without question, to become general; and, under it, large areas of the country, otherwise desert, had been converted into luxuriant fields; orchards and vineyards had been planted; hundreds of millions of taxable property had been created; thousands of happy homes had been founded; colonies, towns and villages had sprung up, and an intelligent and industrious population, invited from abroad, had been induced to settle and develop the resources of the state. The agricultural prosperity already achieved and the future possibilities of southern California and the great valley, which comprised the larger portion of the arable land, depended and would always depend upon the free use of the waters of the rivers and streams and the right to divert and conduct them to the places where they could be made useful. The recent decision, however, had destroyed this system by adjudicating that any riparian proprietor might prevent any person, not a riparian proprietor, from appropriating, diverting or using water from any part of the stream above his land; and that he might do this on an ex-parte application, without notice or warning or an opportunity of being heard until after irretrievable damage had been done. Under the circumstances, trouble was to be anticipated, if attempts were made to enforce the principles of the decision and interfere with the canals and life giving irrigat-

ing streams upon which so large a portion of the state depended. Other states, having an arid climate similar to that of southern California, had conformed their organic and statute laws to the necessities and requirements of their condition in these respects; and in his judgment the time had manifestly now come, and admitted of no delay, for California to do likewise.

Another matter of public concern, in his opinion—and he was doubtless induced to think so by the recent decision—was the reorganization of the supreme court. He averred that the existing system had not given satisfaction, and that the evils connected with it were growing worse instead of better. It was cumbersome and unwieldy. Business before it was greatly in arrears, notwithstanding the creation of a commission to assist the justices and relieve them of a large portion of their work. The division of the court into departments, he further said, had not worked well: it led to the practice of hearing cases twice over, without any advantage and at the expense of too much time. Taken altogether, he thought the judicial system, so far as the supreme court was concerned, to be perplexing and by no means what it ought to be, and that the salaries allowed were too small to induce eminent lawyers to accept places upon its bench. In conclusion he defined, as subjects to be legislated upon at the extra session, amendments to the constitution in reference to securing the right of appropriation, diversion and use of flowing water for irrigation or other beneficial purposes; laws necessary or proper to protect the full and free enjoyment of such rights and repeal a section of the civil code recognizing riparian rights; amendments to the constitution reforming the supreme court, and laws providing for the submission of constitutional amendments to popular vote and paying the expenses thereof.¹

The extra session of 1886 convened, in accordance with the proclamation, on Tuesday, July 20. The assembly met with its old officers; but the senate re-organized and took a couple of days to do so. On July 22, Stoneman sent in a special message reiterating the views expressed in his proclamation and stating that public opinion was united and irresistible in its demand for

¹Senate Journal, Extra Session, 1885, 1, 2.

immediate legislative action to prevent threatened disaster to the vast agricultural interests of the state; that he had yielded to that demand, in conjunction with the special request of a large number of the legislators, in calling the extra session; that he had thus done his part, and it only remained for the legislature to do its part. A number of proposed amendments to the constitution and bills of various kinds, generally directed to the subjects propounded by the proclamation, were thereupon introduced; and soon afterwards a great number of petitions and protests from different parts of the state followed. Some were against a proposition to guarantee water companies an income out of their receipts of at least seven per cent per annum on their investments; some were against any reorganization of the supreme court; some were by persons, who had signed anti-riparian-rights petitions, asking the privilege of withdrawing their names; and some were denunciations of the call for an extra session, the unwarranted attack upon the supreme court and the taking of water without compensation to the riparian owner. In addition to these vigorous protests, various newspapers, and particularly the *San Francisco Daily Evening Post*, charged that members of the senate had corruptly sold their votes in connection with the irrigation question. These newspaper charges were on July 26 brought to the attention of the senate, on a question of privilege by John L. Boone of San Francisco, who pronounced them false and libelous; and, in response to his denunciations, a resolution was adopted, removing the reporter of the *Post* from the floor and declaring that no reporter of that newspaper should be allowed to report the proceedings of the senate during the remainder of the session. Boone's idea, in respect to the extra session, appears to have been that its action should be limited to the proposing of amendments to the constitution on the subjects of irrigation and water rights, which should be submitted to the vote of the people, and that the details of legislation on those subjects, if adopted by the people, should be left to future consideration. But the senate in general did not seem willing to go even to that extent; and, as a matter of fact, though the assembly adopted several amendments, the senate rejected them all; and the result of the legislation of the extra session turned

out to be nothing except a couple of appropriation acts for paying its own expenses.¹

At the same time, however, there were several other very interesting and important subjects, not named in the proclamation nor at all foreseen by Stoneman in making his call for an extra session, that came up for settlement. One was a series of charges of incompetency, by reason of mental and physical infirmity, made by David S. Terry against Chief-justice Robert F. Morrison and Associate-justice John R. Sharpstein of the state supreme court. These justices appear to have incurred the ill-will of Terry on account of decisions in a divorce suit brought by a person, calling herself Sarah Althea Hill Sharon, against William Sharon, the millionaire, a resident of, and United States senator from, the state of Nevada. Terry had espoused the cause of the plaintiff as her attorney; and afterwards, becoming infatuated, married her. Subsequently, when the supreme court, on appeals of her case, ruled adversely to her claims, he, both as advocate and husband, took violent umbrage and, seizing the opportunity of illness on the part of the justices named, presented the charges referred to and asked the legislature to remove them from office, in accordance with a clause to that effect in the constitution. The application was made in the form of a simple petition, signed by Terry, to each house. The senate referred the matter to its judiciary committee, the majority of which reported in favor of a committee of five members to inquire into it; while W. W. Kellogg, as a minority of one, objected that Terry's charges were not sworn to and that no committee should be appointed or action of any kind taken under the circumstances. This minority report occasioned a postponement, and not long afterwards an indefinite postponement of the entire subject.² In the assembly, a committee of seven was appointed to investigate the charges, and a resolution adopted directing copies of Terry's petition to be served upon Justices Morrison and Sharpstein and requiring them to appear and answer before the committee at the supreme court room in the capitol on August 4, 1886. On the day thus

¹ Senate Journal, Extra Session, 1886, 1, 24-32; Assembly Journal, Extra Session, 1885, 124.

² Senate Journal, Extra Session, 1886, 32-34, 60.

fixed, a resolution was adopted to the effect that it was inexpedient to take any further action in the matter; but the next day it was reconsidered, and the committee appears to have gone on and heard testimony. On August 10, a communication, dated August 5, was received from the justices recognizing the right of the legislature to remove them for adequate cause, as provided in the constitution, but declining to recognize any committee as vested with jurisdiction to hear or determine any accusation against them, or to appear or answer before any committee. On the same day the committee reported that Terry's charges were groundless; that the evidence of a large number of witnesses, therewith submitted, showed that there was neither mental nor physical incapacity on the part of either justice to perform the duties of his office, and that the charges should be dismissed as being wholly unsupported by evidence; and with the adoption of this report the subject dropped.¹

Another un contemplated subject that came up for consideration was the election of a United States senator. John F. Miller, who had been elected to that office in 1881 for a full term of six years commencing on March 4, 1881, died at Washington on March 8, 1886, leaving an unexpired term of nearly a year. The legislature not being then in session, Stoneman had appointed George Hearst to fill the office. It probably did not occur to him that a United States senator could be elected at an extra session and a Republican chosen to take the place from his Democratic appointee; but, however this may have been, the United States statute in reference to the subject was clear upon the question; and accordingly on Tuesday, August 3, 1886, both houses proceeded to elect a successor to Hearst to fill out the unexpired term of Miller. The Republicans might now have nominated Aaron A. Sargent, who was their most experienced man for the office; but the same influence, which had excluded him at the previous election, was still at work; and the Republican choice fell upon A. P. Williams. The Democrats nominated George Hearst. In the senate Williams received eighteen votes to thirteen for Hearst; in the assembly Williams received fifty-two to eleven for Hearst. The next day, August 4, in joint

¹ Assembly Journal, Extra Session, 1886, 22-55.

assembly the votes were announced as seventy for Williams and twenty-four for Hearst out of a total of ninety-four; and Williams was declared elected for the unexpired term ending March 3, 1887.¹

After the extra session had lasted a month and nothing in the way of legislation been done, there was talk of final adjournment; and the senate adopted a resolution to that effect, fixing the time for August 20. This, however, was not acceptable to the assembly, and it adopted a resolution to adjourn till Tuesday, September 7, 1886, and then make another attempt to get through the several amendments of the constitution and a few bills relating to irrigation and water rights, which it had passed. Upon this, Stoneman, who was in accord with the assembly, transmitted a special message to both houses, stating that they had met for the purpose of considering certain definite subjects; that a memorial had been presented to him, signed by eighty-nine members of the legislature, asking for the extra session and pledging their support to the measures contemplated, and that he had trusted in their sincerity. And he could not but believe, in view of the vast importance of the questions involved, that the legislature would yet pass such amendments to the constitution and laws as might be necessary to set aside the English common-law doctrine of riparian rights—a doctrine which, if sustained and enforced, would, in his judgment, destroy millions of property and ruin the agricultural interests of a large part of the state. The settlement of these questions would repay a thousand fold the expenses of the session and any additional expenses that might be incurred; and he therefore, on account of the disagreement of the houses and in accordance with the power vested in him in such case by the constitution, adjourned the legislature until Tuesday, September 7, 1886. Thereupon, much confusion reigned in the senate. Some claimed that the legislature was adjourned; others that it was not. Lieutenant-governor Daggett ruled that it was not adjourned and that it could not be adjourned by the governor until both houses had exhausted their resources in trying to come to an agreement. On appeal from this ruling, Daggett was sustained; but not long

¹ Senate Journal, Extra Session, 1886, 39-43.

afterwards, he changed his mind and "out of respect for the governor" declared the senate adjourned as ordered.¹

When the houses met again on September 7, it was found that they were in no better accord than before. Without the senate, the assembly could do nothing; and the senate was not disposed to act. Some of the senators protested against proceeding any further on the ground that there had been no disagreement of the houses when Stoneman had adjourned them, and that the extra session had therefore lapsed. Others took a contrary view; but evidently they either did not consider the destruction of riparian rights so important as Stoneman did, or found that they could not under the condition of things accomplish anything. Some of them doubtless thought that the doctrine of riparian rights, which had grown up as an integral part of the common law and been recognized as beneficial from times immemorial, had some virtue at least for those portions of the state that were favored with natural irrigation, and that if these rights ought to be destroyed in some sections of the country it did not follow that they ought to be destroyed throughout the entire land. But, whatever might be the reason, it was plain that the extra session was a failure and that nothing could be accomplished. And this being the general opinion, the houses, without doing anything further, adjourned sine die on September 11, 1886.²

¹Senate Journal, Extra Session, 1886, 70-72.

²Senate Journal, Extra Session, 1886, 73-87.

CHAPTER XIV.

BARTLETT.

THE adjournment of the extra session of 1886 from August 20 to September 7, 1886, was occasioned in great part by the fact that the state conventions of the two main parties of the state had been called to meet in the interim—the Republican at Los Angeles on August 25, and the Democratic at San Francisco on August 31. The Republican convention adopted a platform reaffirming the principles enunciated at Chicago and at Sacramento in 1884, but added a plank in favor of co-operative labor; another in favor of the free coinage of silver; another against the further unlimited immigration of Chinese; another demanding that the railroad should be required to pay its taxes; another in favor of the so-called “Heath amendment;” another in favor of a proper scheme of irrigation, which would give to the state the control of all unappropriated waters and prevent any further appropriation or the acquiring of any right thereto that would interfere with a just distribution and utilization of such waters by all; another against the “wasteful and incompetent” state administration, whose “weakness, extravagance and vacillating policy” had “brought reproach upon the fair fame of California;” and still another consisting of a declaration that the calling of the extra session of 1886 for the purpose of reversing a decision of the supreme court was without parallel in the history of the country; that the policy which dictated it was un-American and revolutionary, and that no words of censure could adequately characterize that attempt to destroy a co-ordinate branch of the government. It then nominated John F. Swift for governor, Robert W. Waterman for lieutenant-governor, A. Van R. Paterson and Thomas B. McFarland for

justices of the supreme court, Noble Hamilton to fill a vacancy on the supreme bench occasioned by the resignation a short time before of Justice Erskine M. Ross, and a list of candidates for other state officers.¹

It was especially to the administration of President Grover Cleveland and the "honesty, frugality and success" with which it was conducting the affairs of government and "carrying out the principles of democracy in administering public trusts and keeping faith with the people," that the Democratic convention proudly invited attention in its platform. It recommended the free coinage of both gold and silver at the rates fixed by law; denounced the tariff on wool, and advocated the release from taxation of spirits used in the fortification of sweet wines and the protection of the wine, and especially the raisin, industry. It declared itself in favor of liberal wages and free labor and the encouragement of associations formed for the purpose of maintaining their rights by peaceful and efficient means against powerful and oppressive combinations. It announced its unalterable opposition to Chinese immigration and demanded the abrogation of what it called the "Burlingame-Swift" treaty; also its unalterable opposition to all sumptuary legislation. It condemned the great railroad companies "for their defiance of the state power, their corrupt practices and their persistent refusal to contribute their just and lawful proportion of the revenue" and demanded the defeat of the "Heath amendment." It demanded proper protection against invasion and favored liberal treatment of the citizen soldiery, and extended "with special emphasis" its "sympathy to the present heroic efforts of the Irish people." It declared that the English law of riparian rights was inapplicable to the circumstances and conditions of California, and that the state might at any time assume control of the diversion, use and distribution of water under general laws enacted for that purpose—provided it should in no event be called upon to construct irrigation works. It also declared that the public schools would always have the fostering care of the Democratic party, and that it was the duty of government to devise "some way for mining to be continued without injury to any other industry." Two

¹ Davis' Political Conventions, 513-518.

additional planks were adopted; one, offered by David S. Terry, that all supplies to be furnished for public institutions should be the product of white labor only; and the other, offered by G. W. Jeffries, that every Republican in office by appointment, except those holding under civil service rules, should be removed and a Democrat appointed in his place. The Democratic nominations for the principal offices were Washington Bartlett for governor, M. F. Tarpey for lieutenant-governor, Jeremiah F. Sullivan and Samuel Bell McKee for justices of the supreme court, and Jackson Temple to fill the vacancy occasioned by Ross' resignation.

There were numerous other conventions, among which were those of a Citizens' Anti-Chinese party at Sacramento on March 10; a Prohibition party at Sacramento on May 12; a State Irrigation party at San Francisco on May 30; a Grangers' party at Sacramento on September 15, and the American party at Fresno on September 28. The work of the Anti-Chinese consisted mainly of the adoption of a very long memorial to the president of the United States and congress, drawn by a committee of which Swift was chairman, on the subject of "relief for the Pacific coast from the Chinese evil," and of a series of resolutions¹ drawn by a committee of which Horace Davis was chairman, against the presence of Chinese in California, disclaiming any unlawful proceedings, but at the same time recommending the "boycotting" or suspension of amicable dealings with any person who employed a Chinaman either directly or indirectly or purchased the product of Chinese labor. To this boycotting resolution, a number, including Aaron A. Sargent, John Bidwell, Frank M. Pixley, Francis G. Newlands and Marcus H. Hecht, strenuously objected. After discussion and a viva voce vote, which was announced to be in favor of the resolution, Sargent and others demanded a roll-call; and, upon this being refused on the ground that it came too late, Sargent and Bidwell withdrew from the convention. The Prohibitionists, as was to have been expected, adopted a platform against the "manufacture, sale and importation of all alcoholic beverages." Some went further and, among other things, wanted women suffrage. A clause to that effect, however, was rejected; and then the convention, as if

¹ Davis' Political Conventions, 518-524.

sorry for what it had done, adopted a resolution that, notwithstanding such rejection, "the immediate and unconditional enfranchisement of women would tend to the highest interest of the whole people" and that, as individuals, they would use every lawful and proper means to secure an amendment to the constitution conferring upon women the right to vote. They nominated Joel Russell for governor. The Irrigationists, consisting of delegates from some fifty irrigation clubs, adopted a platform setting forth their propositions chiefly in the form of two proposed amendments to the constitution and a statute, designed to destroy riparian rights and secure all unappropriated water as public property and for the use of the people, and in effect declaring that they would support no one for office who was not in favor of their principles. They made no nominations. The Grangers expressed themselves in favor of electing United States senators by a direct vote of the people; in favor of the free coinage of gold and silver; against national banks; in favor of government money which should be a legal tender for all debts; against government bonds; in favor of irrigation; against adulteration of foods, drinks and medicines; against the "Heath amendment;" against any increase of the standing army in time of peace or increase of appropriations for the state militia; against Chinese immigration; in favor of a reduction of fees and salaries of county officers, and in favor of placing women on an equality with men in official clerical employment. They nominated Joel Russell, the Prohibitionist candidate, for governor, Joshua V. Webster for lieutenant-governor and Jackson Temple and Jeremiah F. Sullivan for justices of the supreme court.¹

The American party, which was in substance a rehabilitation of the old Know-Nothing party and reiterated its old doctrines, declared, among other things, that the naturalization laws of the United States ought to be unconditionally repealed; that no non-resident alien should be permitted to own real estate, and that the real estate possessions of resident aliens should be limited in value and area. It nominated a ticket at the head of which it placed John F. Swift, the Republican candidate, for governor. This ticket was published in the *San Francisco Argonaut*, a

¹ Davis' Political Conventions, 479-513, 524-526.

newspaper which had gained a reputation for literary ability, for its attacks upon Roman Catholics, and to some extent for being the advocate and organ of the American party. Its editor, Frank M. Pixley, was a warm personal friend of Swift; and it was in great part through his exertions that Swift was thus nominated. Instead, however, of accepting the nomination so thrown at his feet—which would undoubtedly have secured his election—Swift took occasion to at once write a letter to Pixley, not only declining and rejecting the “unsolicited and undesired honor” of a nomination from the American party, but also expressing himself as glad of the opportunity of giving his views upon the opinions advocated by the Argonaut. He then proceeded to say—and evidently in a tone and manner that indicated his letter was for publication—that he never, either in public or private, expressed or entertained any of the opinions of the Argonaut or the American party; that he never made or felt any distinction between men of the white race, citizens or not citizens, on account of their nationality or religion; that the policy of inviting European immigration was a wise one in its inception, and, even if of doubtful advantage, it was now highly unjust, and unwise because unjust, to agitate the matter over again after millions of good men and excellent citizens had accepted the invitation and acted upon it. He also took occasion to add that he thought Roman Catholics as loyal to republican institutions and to the United States as Protestant Christians or people of any other faith. Such being his sentiments, he took it for granted that the American party would not want him on their ticket; but, whether so or not, he desired his name taken off the American ticket and not again printed in that connection. Whatever Swift’s purpose may have been in writing such a letter, it was certainly one of the most impolitic things he could have done; and great was the surprise of everybody when the letter was printed. The Republicans almost despaired; the Democrats exulted; the American party at once took down Swift’s name and put in its place that of P. D. Wigginton; and it afterwards endorsed Waterman for lieutenant-governor, and McFarland, Paterson and Temple for justices of the supreme court. In the meanwhile, Charles C. O’Donnell, one of the old Workingmen’s

party—who had made himself conspicuous in the constitutional convention of 1878–9 for his violent anti-Chinese and other sand-lots utterances, and who had afterwards continued his agitation with so much success in San Francisco as to be elected coroner in 1884—had nominated himself for governor and relied for support upon what may be called the fag-ends of his own old party and the dissatisfied members of other parties.¹

On November 2, 1886, the election was held; and the public opinion of the day expressed itself through the ballot-box. For governor, Bartlett, who was elected, received eighty-four thousand nine hundred and seventy votes to eighty-four thousand three hundred and eleven for Swift, six thousand four hundred and thirty-two for Russell, seven thousand three hundred and forty-seven for Wigginton, and twelve thousand two hundred and twenty-seven for O'Donnell. For lieutenant-governor, Waterman, who was elected, received ninety-four thousand nine hundred and seventy-three to ninety-two thousand five hundred and seventy-six for Tarpey. McFarland, Paterson and Temple were elected justices of the supreme court by very large majorities—the first two for full terms and the last for the unexpired term. Thus the popular voice was for a Democratic governor, a Republican lieutenant-governor, Republican justices of the supreme court for the long term, and a Democrat for the short term. The rest of the ticket elected was partly Republican and partly Democratic, and nearly evenly divided. For congress, Thomas L. Thompson, Marion Briggs, Joseph McKenna, William W. Morrow, Charles N. Felton and William Vandever, the first two Democrats and the other four Republicans, were elected. The railroad commission, got two Republicans and one Democrat, the state board of equalization two Democrats and one Republican. And, last not least, the "Heath amendment" to the constitution, which, as before stated, proposed an annual tax of two and a half per cent on the gross earnings of railroad companies in lieu of all other state and county taxes—the gross earnings to be ascertained by the state board of equalization—together with some other provisions in reference to revenue, was defeated.²

¹ Davis' Political Conventions, 526–532.

² Senate Journal, 1887, 23; Davis' Political Conventions, 532, 533.

The legislature of 1887 met on January 3. The senate, being largely Democratic, elected Stephen M. White its president pro tempore; and, following the precedent of the Democratic senate in 1871 when Pacheco was lieutenant-governor, it resolved to appoint all its own committees, instead of leaving them for Waterman's choice.¹ The assembly, having a small Republican majority, chose William H. Jordan its speaker, who of course appointed the committees. On January 6, after the houses were fully organized, Governor Stoneman transmitted to them his second biennial and last message. He said that the manifold industrial, economical and commercial interests of the state were in a highly prosperous condition; immigration pouring in; property values being enhanced; rich resources developed; fields for labor multiplying; and peace and good order—the concomitants of prosperity—everywhere prevailed. At the same time the expenses of the government, which had been unprecedentedly low during the first two years of his administration, had greatly increased in the last two years—the expenditures of the latter being over two and a half millions more than those of the former, and the state rate of taxation having advanced from forty-five and one-fifth cents on the one hundred dollars in 1884 to fifty-six cents in 1886. The railroad suit in the United States supreme court, he said, had been decided against the state, but not upon the vital question as to the validity of the revenue system of the constitution as applied to railroads. Meanwhile, the state controller and himself had been in full accord in unremitting efforts to compel railroads to discharge their obligations to the state; and, though they had failed, better things were to be hoped under the new administration, when the legal department would doubtless cordially co-operate with the other departments of the government. The amount of taxes with penalties and interest against the Central and Southern Pacific companies, for the years from 1880 to 1883 inclusive, was upwards of one and a half million dollars, of which Attorney-general Marshall had collected under his arrangement of compromise, and on June 19, 1886, paid to the state, the sum of a little over seven hundred and sixty-eight thousand dollars. The sum still remaining due, counting penal-

¹Senate Journal, 1887, 9, 10.

ties and interest and including the unpaid taxes of 1885 and 1886, was over two and a quarter million dollars.¹

In reference to the extra session of 1886, he said that, though barren of the results anticipated, it had done some good by the new light thrown by its discussions upon the subject of irrigation; but it was evident that a session of sixty days was not enough to solve so large a question. As to the act of 1885 for compiling, printing and furnishing text-books for the common schools, the appropriation had been one hundred and seventy thousand dollars, with which a new plant had been established in connection with the state printing office; copyrights purchased; and books, including speller and three readers, or in all eleven hundred and twenty-eight pages that compared favorably with any in the United States, were printed and furnished at less than one-half the usual price. "The work," he added, "has been well done and has effected an enormous saving to the people of the state for all time to come. It has, furthermore, had as a result the incalculable advantage of demonstrating that a state may do such work for itself; and no doubt this will enure to the benefit of the whole Union, and the example of California be followed by other states." He commended the secretary of state for materially reducing the expenses of his office and the surveyor-general for making his, more nearly self-sustaining than it had been during any past administration. He stated the total state expenditures for charitable institutions, during the previous two fiscal years, at very nearly six hundred and twenty-five thousand dollars; recommended an increase of the jute mill plant at the San Quentin state prison, and the employment of the convicts at Folsom to quarry stone for the San Francisco sea-wall, and remarked upon the enormous overcrowding of the insane asylums,—there being nearly three thousand patients in 1886 as against a little over fifteen hundred in 1884. The board of bank commissioners had done excellent work—having under their charge ninety-six banks to be examined twice every year. Of these, twenty-two were savings banks holding in their keeping sixty-three millions of dollars; while the other seventy-four were commercial banks having forty and a half millions. He called

¹ 1 Appendix to Legislative Journals, 1887.

attention to the annual decrease of the quinnat salmon and recommended more stringent protection. He also spoke of a reduction, during the previous two years, of twenty per cent of the dockage and in some instances of fifty per cent in tolls by the state harbor commission at San Francisco; while tolls on wheat and flour shipped from the port had been entirely removed; and, in the same connection, he mentioned the fact that at the end of 1886 the total completed length of the San Francisco sea-wall was six thousand three hundred and sixty-one feet at a cost of a little over one million one hundred and ninety-one thousand dollars, or an average of about one hundred and eighty-seven and a quarter dollars per lineal foot.

But it was perhaps with most satisfaction that he reviewed the chief agricultural and horticultural industries of the state and their great development. "A state," said he, "that can show a production annually of from twenty to forty million bushels of wheat, fifteen to eighteen million gallons of wine, thousands of tons of fruit, eight to ten million pounds of wool, a half million boxes of raisins, and whose citrus fruits are the admiration of all, must be prosperous. The demand for her productions will increase in a manifold degree." He praised the managing boards of agriculture and horticulture as having done well and reflected credit upon the state; and he accordingly had a good word to say of the state agricultural society, the state board of horticulture, the state viticultural commission, and also for the board of silk culture and the mining bureau. And in conclusion—stating that with this message ended his official duties—he said that it had been his aim to emulate the records for efficiency and integrity left by his predecessor; and that it was a source of deep gratification to him to have the honor and privilege of handing over the power committed to his trust by the people of the state to his successor, who had so deservedly earned an enviable reputation for qualities of statesmanship—pure, wise and economic—and whose public life had ever been devoted to the best interests of the people.¹

Washington Bartlett, the sixteenth governor of the state of California, elected to the fourteenth gubernatorial term, was born

¹ 1 Appendix to Legislative Journals, 1887.

in Savannah, Georgia, on February 29, 1824. As he grew up, he attended school in that city and afterwards in Tallahassee, Florida, to which place the Bartlett family removed in 1837. There he commenced business by learning the printer's occupation in the office of his father, who was the editor and proprietor of a newspaper. In 1845, at the age of twenty-one years, he commenced the publication of a newspaper on his own account. On January 13, 1849, he took passage in the ship *Othello* from Charleston, South Carolina, for California and arrived in San Francisco, by way of Cape Horn, on November 19, 1849. Immediately upon his arrival, having previously shipped from Charleston the necessary materials, he opened a job-printing office and went to work. One of the first fruits of his labor was the publication of a small royal-octavo volume entitled, "*California As It Is and As It May Be*," bearing the imprint "San Francisco, printed by Washington Bartlett, No. 8 Clay street, 1849." On January 23, 1850, he issued the first number of the *Daily Journal of Commerce*, which made its appearance the next day after the old *Alta California*, previously published as a tri-weekly, came out as the *Daily Alta California*—the two thus being the first daily newspapers published in the state. It was his misfortune to lose heavily in several of the great fires of the early days; but he managed to keep at work and continued in the newspaper and printing business until 1857—having been interested at different times in various newspapers, including the *Evening Journal*, the *Evening News* and lastly in the *True Californian*. In 1857, the year after the famous vigilance committee and the organization of the great People's party, he was appointed deputy in the office of the county clerk of the city and county of San Francisco; in 1859 was elected county clerk, and re-elected to the same office in 1861. After the expiration of his second term, having been admitted to the bar, he practiced law in partnership with his brother, Columbus Bartlett, until 1867, when he was again elected county clerk of the city and county of San Francisco and served a third term. In 1870 he was appointed by Governor Haight a state harbor commissioner to fill a vacancy occasioned by the death of James H. Cutter. In 1872 he was elected a state senator on the Democratic ticket and served a four years' term, after

which he visited the eastern states and Europe, remaining abroad for several years. In 1882, having returned from his travels, he was elected mayor of the city and county of San Francisco and re-elected in 1884, serving two full terms and always with credit. In September, 1886, as already stated, he was nominated by the Democratic party for governor and at the November election chosen over John F. Swift, having the advantage in his favor on the one hand of Swift's impolitic letter against the American party, and the disadvantage on the other hand of the candidacy of Charles C. O'Donnell, who carried off many votes that would otherwise have gone Democratic.

On account of several delays in the transmission of election returns, Bartlett was not inaugurated as governor until Saturday, January 8, 1887. He had prepared his inaugural remarks with care and read them on that day to the houses in joint convention. He commenced by saying that, after a retirement of nearly a quarter of a century, the Democratic party was again in power and the national government being administered according to the precepts of Jefferson, Madison and Jackson; that the bitterness engendered by the civil war was, under an equal and just administration of federal affairs, giving place to fraternal love, and that he believed the day not far distant when political divisions on sectional lines would be unknown in the land. The time had come when wise legislation—the adoption of a comprehensive system adapted to the wants of the country—must be formulated and put in operation. There was a general feeling of discontent in the community and a demand for more stringent measures against Chinese immigration, including the abrogation of the Burlingame treaty, which had wrought very great injury to the Pacific states and territories by encouraging the coming and settling in their midst of several hundred thousand people of inferior race and radically dissimilar in physical, mental and moral constitution. Their presence prevented the immigration of white laborers and caused wide-spread dissatisfaction among the white laboring classes. While every one within the jurisdiction of the state was entitled to and should receive the protection of the laws, still the policy of admitting in such large numbers a race, who were distasteful to the white people, detrimental to

their prosperity and calculated to breed trouble, could not be upheld; and it was to be hoped that the national government might heed the remonstrances that had been made, and afford the necessary relief.

He thought it the duty of the national government to see to the better defense of the coast and expressed himself in favor of supporting the national guard of California; keeping it in a state of efficiency and readiness to maintain the civil authorities, and especially so in view of the presence of "a turbulent and disorderly element," lately come into the country, that was "inclined to resort to the most diabolical methods in order to gratify its revenge or show its contempt for our laws and institutions, and could only be reached by the strong arm of the law, supported by a sufficient physical force. In reference to the state finances, he regarded the situation as very unfavorable, in consideration of the "astonishing fact" that the expenses of the last two years had exceeded those of the previous two years over two millions of dollars. There was great need of severe scrutiny into public expenditures and unsparing retrenchment and reform. He was in favor of work-schools and industrial training—a subject which he deemed of absorbing interest to all good citizens—and he gave it as his opinion that the ordinary methods of education were calculated more to make lovers of books than pupils trained for actual practical life. He deprecated the abuses of corporations in issuing and disposing of bonds, while the capital stock had not been paid up, and called attention to the fact that stocks still continued in various ways to be sold on margins, notwithstanding the prohibitions of the constitution. The winding up of bankrupt banking institutions needed amendment; laws should be passed to regulate electric lines, including steam, salt-water and hot-air pipes, in cities and towns, for the reason that the practice in vogue of erecting poles and stretching wires was becoming an intolerable nuisance. Limitations should also be placed upon municipal corporations in regard to privileges of using public streets by railroad and other corporations; and franchises should not be given for more than twenty-five years. Such a prohibition, he thought, would tend to prevent the indiscriminate giving away for too long periods of franchises, which

in the city of San Francisco alone were worth many millions of dollars. And he desired it to be understood that, so far as he was concerned, he would not deem every failure of the legislature to perform its duty as an "extraordinary occasion" or justify him in calling it together in extra session. On the contrary he would accept it as a deliberate act and leave the responsibility with those who were thus negligent, and their constituencies. It was his intention to the best of his abilities to administer his office upon business principles and in a business-like manner.¹

One of the first important measures that came before the legislature of 1887 was the election of a United States senator for a full term commencing on March 4 of that year. This was the place made vacant by the expiration of the term to which John F. Miller had been elected in 1881. The majority of the two houses being Democratic, there was but one candidate having any chance of success; and this was George Hearst. On the Republican side, Henry Vrooman, a state senator, who had been and was the most active supporter of United States Senator Leland Stanford in the legislature, received a complimentary nomination. In the senate, Hearst received twenty-six votes and Vrooman twelve; in the assembly, Hearst thirty-eight and Vrooman forty. On Wednesday, January 19, in accordance with law, the two houses met in joint-assembly for the final ballot, when Hearst received sixty-five votes to Vrooman's fifty-two, and was declared elected. The next important business was the legislation of the session, commencing with "an act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes." This important statute, intended to meet the great question of utilizing the arid wastes of the southern portion of the state, was usually known, on account of C. C. Wright, assemblyman from Stanislaus county, who brought it forward, as the "Wright act." It passed the assembly unanimously, as it also did the senate, after many amendments which were concurred in by the assembly, and was approved by Bartlett on March 7, 1887.² It immediately

¹ 1 Appendix to Legislative Journals, 1887.

² Assembly Journal, 1887, 401, 494, 458, 693; Stats. 1887, 29.

became the guide for numerous irrigation works, involving millions of dollars; and, though frequently amended, remains in substance the law upon the subject. But at the same time, notwithstanding numerous decisions in the state supreme court in its favor,¹ it was violently attacked in the United States circuit court for the southern district of California as unconstitutional, and was in fact so pronounced by that court; but on appeal the decision declaring its unconstitutionality has been reversed by the supreme court of the United States, and the act remains in full force.

Another important measure passed at this session was "an act to provide for the permanent support of the university of California by the levy of a rate of taxation and the creation of a fund therefor." It was by virtue of this law that, in the language of William H. Jordan, the speaker of the assembly, "the university—ever the pride of the state—has been placed upon an independent and substantial footing."² Another interesting act was an amendment of a statute of 1878 allowing what is known as "accumulative voting," whereby every member of a corporation was allowed to cast as many votes for one director as there were directors to be elected. This provision, however good it might have been in some cases, had been found to work very badly in an election for directors of the Society of California Pioneers; and at their instance the law was so amended that cumulative voting should not apply to literary, religious, scientific, social or benevolent societies, unless so provided in their by-laws or rules.³ Another act passed at this session and approved by the governor was one, already referred to, appropriating five thousand dollars for the erection of a monument over the grave of James W. Marshall, the discoverer of gold in California.⁴

Bartlett exercised the veto power in only two instances. One was a senate bill in reference to what he regarded as an excessive

¹ *Turlock Irrigation District vs. Williams* 76 Cal. 360; *Woodward vs. Fruitvale Sanitary District*, 99 Cal. 854.

² *Assembly Journal*, 1887, 869; *Stats.* 1887, 2.

³ *Senate Journal*, 1887, 77; *Amendments to Codes*, 1877-8, 7, 8; *Stats.* 1887, 95.

⁴ *Stats.* 1887, 50.

appropriation for a permanent fund for the purchase of jute to be manufactured at the San Quentin state prison; and the veto was unanimously sustained by the senate. The other was in reference to a too broad and indefinite assembly bill, requiring "every maker or manufacturer of any article made or manufactured in this state" to label or stamp it with his name and place of manufacture under liability of being punished as a criminal. It was probably intended as an anti-Chinese measure; but, whether so or not, the governor regarded it as crude and illiberal; and his veto was sustained in the assembly by forty-two votes against thirty-one.¹ But there was still another method of throttling bills passed within ten days before the adjournment of the legislature, besides vetoing them. This was by what was commonly called "pocketing" them or, in other words, by simply refusing to approve them. In accordance with the constitution, such unapproved bills did not become laws; and Bartlett disposed of a number of improper enactments in that way.

Among the propositions presented to this legislature was one, on behalf of Hubert H. Bancroft, for the purchase of a library of books and manuscripts collected with a view to a history of the Pacific states and territories of North America, and upon which the volumes, some forty in number and commonly known as "Bancroft's Histories," were founded. They were said in the offer to the state to consist of upwards of forty thousand volumes. According to some estimates, their value could not have much, if at all, exceeded fifty thousand dollars, though the price asked was two hundred and fifty thousand. A somewhat remarkable circumstance was the extensive advertising work that was done and the great number of petitions presented from prominent persons in favor of the purchase. On account of these petitions and active solicitation, a bill, introduced in the senate, to pay two hundred and fifty thousand dollars for the collection and add it to the state library was received with apparent approval, and being referred to the state library committee, was almost immediately reported back favorably. The plan evidently was to rush the project through as fast as possible; but, as soon as inquiries began to be made, objections sprang up. In the assembly, a

¹Senate Journal, 1887, 555, 556; Assembly Journal, 1887, 693, 765.

resolution to authorize the state library committee to visit and examine the collection in San Francisco was laid on the table by a vote of thirty-one to seven; and in the senate, a motion to strike out the enacting clause of the bill was barely lost by a vote of sixteen to eighteen. The indications of final defeat, however, were so plain that the bill was withdrawn by its author.¹

Among the books in the Bancroft collection some were undoubtedly of value, but many and probably most were duplicates of what were already in the state library and consequently of no great use to the state. Of this number, were almost all of recent publication relating to California. Notice has already been taken in these pages of the chief publications anterior to the gold discovery in 1848. Almost immediately upon that discovery and the rush to the gold fields, books and pamphlets and publications in reference to them and matters more or less connected with them and the country began to make their appearance in great numbers, running up into the hundreds or thousands; but they were mostly hasty sketches of travel, adventure and observations by persons who spent but a few years in the country and whose books are to be found in all the large libraries. Of the manuscripts most were copies, some from the California archives and a few collected from other sources—some of value but in general of little use except to fill shelves. There were also a number of what were called dictated narratives, written down by stenographic reporters from the statements of old residents; but these, even including those personally written, as may well be imagined, were in general not only unreliable but treated of incidents and observations of no great importance or interest in view of the very thorough and complete accounts that had previously appeared in better shape in printed books.

No state has paid greater attention to education than California; and probably in no other country in proportion to its inhabitants are there more or more judiciously selected or more widely patronized libraries and literary collections. Almost every branch of science, philosophy and learning has been more or less cultivated, and some of them with credit and success.

¹ Senate Journal, 1887, 136, 139, 303, 427; Assembly Journal, 1887, 415.

The California Academy of Sciences, instituted in the very early days of the state, including its various branches, and other scientific associations in great numbers, historical and geographical societies, art associations and societies of all kinds for mental improvement, together with publications, magazines, pamphlets, and newspapers almost without limit or end, have all contributed to make the predominant tone of society intellectual and laid a foundation for literary and other intellectual work of the very highest order in the future. In the departments of history, law, medicine, science, political economy, novels, adventures, fiction and poetry, besides many others, excellent work has been done. Among the most popular and widely-known of the Californian writers were the humorists, George H. Derby, who wrote under the name first of "John P. Squibbob" and afterwards of "John Phoenix," Samuel C. Clemens, whose nom-de-plume was "Mark Twain," and Francis Bret Harte. But there were many other deserving writers, who have attracted marked attention and deserved great credit. The same may be said of the poets, led by Edward Pollock, an irregular genius of the early days, whose fitful fire was too early quenched by death. And as the Californians have made large advances in the cultivation of literature, so have they in the various branches of the fine arts, painting, sculpture, architecture and music, all of which have met with recognition and encouragement and brought forth examples of skill and proficiency that compare well with any in other parts of the world. Of painters, especially, few states can boast so bright a galaxy, commencing with the excellent pioneer work of Charles Nahl and now flourishing in the brilliant, soul-fraught canvases of William Keith, Thomas Hill and others.

After the settlement of the Bancroft library business and the virtual determination of the state thereby that the literary part of its interests was in reasonably good condition as it was, there remained very little more for the legislature to do. There were, as there has been at every session since the adoption of the constitution of 1879, a great many proposed amendments to that instrument; but, though some were passed, none of them were finally adopted by the people; and it was not until some years subsequent that any great number became portions of the organic

law. A few interesting reports were received, particularly a couple in relation to coast defenses and the condition of the state militia, and one by the state controller, John P. Dunn, in reference to state finances and, among other things, various defalcations and shortages, which had occurred in state offices, and the suits which had been brought against delinquents. It remains to say of this session, that Lieutenant-governor Waterman had a somewhat novel experience as presiding officer of the senate. That body, which was more than two-thirds Democratic, had, as already stated, taken away from him as a Republican the appointment of committees; and, when he assumed office, there was at first a disposition to take appeals from his decisions. But the evident desire which he manifested to be impartial and do his very best in his position soon rallied friends around him; he became a favorite; and it seemed to be the general understanding that he must be sustained and his presidency made a success. On March 11, the day before the end of the session, not merely a vote of thanks was tendered him, but a formal series of resolutions were adopted, signed by every one of the forty senators and spread upon the journal, expressing their confidence in him as an honest and faithful officer, diligent, impartial and courteous in the performance of his duties, and giving assurances that in the hearts of each and all the warmest sentiments of regard and affection were entertained for him.¹

With the end of the legislature of 1887, Bartlett's career substantially closed. It was with difficulty that he could get through with the strain of the last days of the session. He had been attacked by the disorder, commonly known as Bright's disease, and was a very ill man. Soon after the finishing up of his legislative business, he moved in search of health or relief to Highland Springs in Lake county and from there to the Santa Cruz mountains. But the hand of death was upon him; and he knew that the end was approaching. Being unmarried, he made a final remove to the house of a cousin in Oakland, in which city also or its neighborhood most of his relatives in California resided; and there on September 12, 1887, he breathed his last, universally esteemed and universally regretted. Soon after death his body

¹ Senate Journal, 1887, 614.

was taken to San Francisco and lay in state in the Hall of the Society of California Pioneers until September 16, when it was given a public funeral; and the entire community united in paying him the respect due to his virtues and doing honor to his memory. And in the afternoon of the same day his remains were deposited in Mountain View cemetery—on the Contra Costa hills overlooking the peaceful bay with its teeming cities and out, through the Golden Gate, to the great ocean beyond.

Bartlett was the first state governor that died in office. Eight of the ex-governors were living at the time—Burnett, Downey, Stanford, Low, Booth, Pacheco, Perkins and Stoneman—and seven were dead. McDougal died in San Francisco on March 30, 1866; Bigler in Sacramento on November 29, 1871; Johnson at Salt Lake City on August 31, 1872; Weller at New Orleans on August 17, 1875; Haight at San Francisco on September 2, 1878; Latham at New York on March 4, 1882, and Irwin in San Francisco on March 15, 1886. But, within a few years, six more died—Booth at Sacramento on July 14, 1892; Stanford at Palo Alto on June 20, 1893; Downey at Los Angeles on March 1, 1894; Low at San Francisco on July 23, 1894; Stoneman at Buffalo, New York, on September 5, 1894; and Burnett at San Francisco on May 17, 1895. Upon Bartlett's death on September 12, 1887, the office of governor devolved upon Robert W. Waterman, who had been elected lieutenant-governor, and the office of lieutenant-governor upon Stephen M. White, the president pro tempore of the senate. On the next day, September 13, Waterman assumed the duties of governor and at the next legislature, in 1889, White presided over the senate as lieutenant-governor; and they continued in those positions until the installation of their successors.

Meanwhile the life of the state, as a social aggregate or organic whole, continued its mighty growth. The loss of many of the pioneers, those remarkable men who had given a distinctive character to civilization on the Pacific coast, affected it to some extent; but the impress they stamped upon the country remained; and in its continuing growth it took the direction and shape with which under their guidance it had started. The same energy and enterprise, intellectual as well as physical; the same earnestness and steadiness of purpose; the same hatred and contempt of

shams and shoddy; the same respect for the rights of others and sympathy for misfortune; the same light-hearted and good-humored way of meeting and overcoming obstacles—all these peculiarities of the old immigration and the early mining days have become, so to speak, an integral part of and contributed to make up the genuine Californian character. It is the character of men who have learned to face danger with intrepidity; who have had vast experience of all kinds of fortune and been taught to meet each with equanimity; who in the feeling of their own worth and strength have found it good to be patient and willing each to wait his own turn; who have become accustomed, though not guiltless of excesses and rather given to profanity and slang, to do just what they profess and, when in earnest, to say just what they mean, and who, though not specially fond of controversy and sensibly averse to getting into unnecessary quarrels, have never failed in the end to recognize their own rights, and, knowing, to insist upon and maintain them.

In illustration of these statements and in proof of this peculiar character of the Californians—which is still in the early stages of its growth and development and whose complete perfection has been and must continue to be the great end of Californian polity and civilization—it is only necessary to recall for a moment a few main circumstances of their history. One, and the first to be specially noticed as indicative of extraordinary character, was the vigilance committees and particularly that most remarkable and significant one that may be, and generally is, called the great one of 1856. It might be too much to say that no other community could have conceived and carried through to completion those famous popular movements; but it is certain that no other community has had anything of the kind to equal or compare with them in intrinsic excellence. They may have been, and doubtless were to a greater or less extent, evolved and developed out of the frequent and necessary associations for mutual protection in the long journeys across the plains and the long voyages around Cape Horn; but, however this may be, they were the genuine growth and product and, it may be added, the efflorescence of the choicest spirits of the world thrown together in a new, untried and unprecedented situation, of which no other

community had ever had knowledge or experience. It is not intended to defend or palliate what may be designated as the common run of lynchings, of which California in its excesses has had entirely too many; no words can be too severe in condemnation of most of them; but the vigilance committee referred to—which though in direct violation of law was designed only to guard and protect the spirit and real life of the law, clean out its polluted sanctuaries and clear away the noxious elements that stifled and threatened its extinction—and the People's party, which followed and into which it developed, with its government unparalleled for good, was not only its fruition but at the same time the proof of its excellence.

Another main circumstance, illustrative of the Californian character, has been the remarkable changes in the vote of the people from one election to another. For a time after the Mexican war, everything was Democratic, and for a time after the breaking out of the civil war, everything was Republican; but since then there has been a strange rotation—the administrations changing nearly every term from one party to the other and usually by from twenty to thirty thousand majority. Commencing for instance with Low, Republican, in 1863, the next was Haight, Democrat; followed by Booth and Pacheco, Republican; then Irwin, Democrat; followed by Perkins, Republican; next Stoneman, Democrat; followed by the divided administration of Bartlett, Democrat, and Waterman, Republican; and succeeding them Henry H. Markham, Republican, and after him James H. Budd, Democrat. These significant and unusual facts, hardly paralleled in any other community, are only explicable by a consideration of the independent and what may be called “thinking-for-itself” character of the people, which has always been accustomed to get up more numerous distinct parties and do more “scratching” of tickets than any other aggregation of voters in the United States.

A third main circumstance, and the last that will be here adverted to in this connection—and the one that is the most important and constitutes the greatest glory of the Californian character—has been the uniform and unbroken thread of practical good sense and unmistakable sincerity that has pervaded

every step of its progression from the days of the mining camps to those of the literary, scientific, fine-arts and social advances of the present time. This has been especially made manifest in the stand taken and consistently maintained by California on the slavery question in every stage of the war for the Union, and by the manner in which it has met the labor troubles, the communistic agitations of the sand-lots, and the boycotting and other violences of the strikes. No community has had a greater respect for labor and the genuine laborer; none greater willingness to listen to their complaints, and none has been more ready to extend sympathy and lend a helping hand to deserving men out of employment. But for Workingmen who have never worked, it has had no use; and for self-constituted leaders, who have merely fomented discontent and threatened the torch and dynamite bomb, it has had no patience, but has put them down with a powerful, though at the same time gentle, hand. No other state has had a more difficult part to play in its advance, particularly of late years—handicapped as it has been by a larger number of tramps, vagrants and disorderly classes in general in proportion to its population than any other state and trammelled and hampered by the conditions and anomalies impressed upon the constitution and laws by the transitory but malignant influence of the sand-lots. But at the same time, owing to those fundamental principles of right that underlie and those traits of untiring energy and unconquerable courage that permeate the Californian character, no state has ever more successfully wrestled with and overcome the monsters that for the time threatened to retard, if not destroy, its development and growth.

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